U.S. EMBASSY IN ULAANBAATAR MONGOLIA

2013 MONGOLIA INVESTMENT CLIMATE STATEMENT

ECONOMIC AND COMMERCIAL SECTION, U.S. EMBASSY ULAANBAATAR, MONGOLIA

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A.1 OPENNESS OF GOVERNMENT TO FOREIGN INVESTMENT

The Government of Mongolia (GOM) has consistently said that it supports foreign direct investment (FDI) in all sectors. As recently as December 2012, President of Mongolia, Ts. Elbegdorj, publicly stated that the GOM will keep key foreign investment commitments because it recognizes the value of FDI for Mongolia. However, investors assert that Mongolia's support for FDI seems more an aspiration than a reality. Specifically, they report that government action affecting both FDI and resource extraction show a declining GOM commitment to the transparent rule of law and free market principles.

Observers argue that the *2012 Strategic Entities Foreign Investment Law of Mongolia* (SEFIL) limits foreign ownership of assets and access to use rights in three key sectors, among them natural resource extraction. Although SEFIL's full impact remains unclear, investors worry that the law may bar them from participating in key sectors of the Mongolian economy or force divestment of Mongolian assets and equities in the affected sectors. Consequently, both foreign and domestic investors consider Mongolia a riskier place to invest than it once was; and perhaps riskier than similar emerging markets.

More positively, the key Oyu Tolgoi copper-gold project (OT) moves forward, having brought over US $ 7 billion in capital, technology, jobs, and tax revenues to Mongolia through 2012. Although some clouds loom over the OT horizon, this marquee project justifies Mongolia's investment potential for most investors.

However, doubts persist over both the GOM's commitment to honoring the OT Investment Agreement (IA) and its ability to manage public expectations over mining revenues and related development. In addition, delays in striking deals on important coal projects at the world class Tavan Tolgoi coking coal deposit (TT) and delays in reforming Mongolia's security laws and equity markets spur concern that the GOM lacks both the will and the capacity to execute multiple reforms and projects. Investors worry that Mongolia, overwhelmed by these demands, will simply cease to complete vital reforms, impose new burdens on investors, and delay or effectively cancel projects.

Investors also suggest that Mongolia's ambivalence to FDI may be driven by the GOM's aim to create state-owned national mining champions for coal, uranium, copper, and rare earths. GOM representatives have argued in the media and to contacts that a national champion owned and operated primarily by Mongolians for Mongolians would be more inclined to conduct value-added operations and

development in Mongolia than would a company primarily owned and operated by foreign investors.

Recent Legislative and Governmental Trends affecting FDI in Mongolia

Foreign and domestic investors argue that Mongolia's processes for crafting both laws and regulations negatively impacts FDI into Mongolia. A key concern is that the proposal of amendments to a given law seems to freeze, or at least significantly slow, the Mongolian regulatory process; thus threatening access to use rights granted under current Mongolian laws. For example, the ongoing amendment process to the 2006 Minerals Law of Mongolia has adversely affected the regime for issuing exploration and mining licenses.

In 2010, the President of Mongolia criticized the existing minerals licensing regime, setting into motion an amendment process for the entire law. This process, well into its third year, has produced numerous draft amendments by the government, Parliament, and most recently from the President of Mongolia. Although the 2006 Minerals Law is in force, officials at all levels now delay—or openly refuse—to process normal requests for extending or issuing exploration and mining licenses; and state that the amendment process effectively invalidates current law, because actions taken under current law might be subject to *post facto* changes imposed under a new statute. Therefore, officials are reluctant to issue licenses and permits that might eventually become invalid or require alteration. In certain cases, investors report that officials have threatened to revoke valid licenses because they might "illegal" under the pending legislation.

The effect has been to generate long and costly bureaucratic delays in many economic and commercial sectors, raising investment risk.

Legislating the Resource Pie

Investors may expect that investments, particularly in the resource sector, will be subject to uncertain legal and regulatory regimes as the GOM reconciles fiscal demands with public expectations.

The GOM has claimed that it must amend laws related to resource extraction to insure that Mongolia gets its fair share of revenues from such activities; and to insure that investors and operators fulfill their environmental obligations and corporate social responsibilities to the national and local communities in which they work.

Public misperception and impatience fuel this trend. First, media and observers report that the Mongolian public believes that current statutes and regulations grant foreign and domestic investors all the benefits of extracting resources, while leaving local communities with all the costs. Second, the Mongolia public expects that mining revenues will finance significant infrastructure and development needs, and has grown increasingly impatient over delays in receiving long-promised benefits from major mining projects.

Faced with a restive public, the GOM amends both statute and regulation to gain more revenue and to quell public unease. This process has been extremely chaotic, characterized by abrupt, non-transparent attempts to change laws. These efforts impose higher licensing and permit fees, greater obligations on the part of investors to pay for local and regional development, higher royalties and taxes, and larger equity stakes for either Mongolian state-owned or private entities in resource extraction companies

Passage of the Strategic Entities Foreign Investment Law (SEFIL)

In May 2012, Parliament passed the *Strategic Entities Foreign Investment Law (SEFIL)*, just before parliamentary elections. Investors widely interpreted this statute as Parliament's response to voter concerns that Mongolia's sovereignty was threatened by the acquisition of mining rights by foreign state-owned and private firms. The Parliament's short deliberative phase had little public transparency, limiting review and comment of the bill by affected parties. The general consensus among the investor community is that the current law will be difficult to implement. In late 2012, senior officials suggested that the GOM might amend SEFIL in 2013, but investors indicate that GOM statements are currently too vague to quell concerns.

The law defines sectors of strategic importance to include (i) mineral and metal resources (and perhaps hydrocarbon resources); (ii) banking and finance; and (iii) media and communications; and imposes the following restrictions and obligations on foreign state-owned and private investors active in Mongolia:

- Private foreign direct investors (inclusive of affiliates and third parties) must obtain Cabinet and/or parliamentary approval to operate in the specified sectors of strategic importance or to conclude certain transactions with *business entities operating in sectors of strategic importance* (BESI) in many cases. The language "to operate" has not been defined in the SEFIL or clarified through regulations.

- Specific to shareholding, private foreign direct investors (inclusive of affiliates and third parties) must obtain approval from the Cabinet of Ministers for transactions to acquire one-third or more of the shares of a BESI. If the shareholding by a private foreign direct investor in a BESI exceeds 49 percent and the investment at the time is greater than 100 billion Tugriks (about $75 million USD as of this report), then parliamentary approval is required.
- Foreign state-owned legal entities, entities with state ownership and international organizations (inclusive of affiliates and third parties) must obtain Cabinet and/or parliamentary approval to operate in Mongolia or to invest in any company (inclusive of affiliated entities or third parties). This includes investment in sectors outside of sectors of strategic importance.
- Specific to shareholding, so far SEFIL's provisions are being widely interpreted to require foreign state-owned legal entities, entities with state ownership and international organizations (inclusive of affiliates and third parties) to obtain Cabinet approval to acquire any amount of shares in any company in Mongolia. SEFIL does not clearly state whether Parliamentary approval is required if shareholding by foreign state-owned legal entities, entities with state ownership and international organizations (inclusive of their affiliates and third parties) in a BESI or other company is greater than 49 percent and the investment at the time is greater than 100 billion Tugriks .
- Investors may also be required to seek approval for stock transactions for companies listed on both the Mongolian Stock Exchange and foreign exchanges.
- Stock and other equity transactions on both foreign and domestic exchanges on assets and companies in the specified strategic sectors may be subject to Mongolian taxation.
- All entities subject to the law may also be required to submit to GOM involvement in management, procurement, hiring, and other normal business operations and decisions.
- Current investments may not be subject to the law's provisions; however, if the foreign entity changes its status (i.e. tax or corporate restructuring with the same beneficial ownership), it may become subject to the law's provisions.
- International treaties, such as the U.S.-Mongolia Bilateral Investment Treaty, which allows U.S. investors to be treated as a Mongolian legal entity for investment purposes, appear to take precedence over SEFIL.
- The Foreign Investment Regulatory and Registration Department (FIRRD) of the Ministry of Economic Development (MED) will serve as the secretariat and first reviewer of requests for FDI approval, making recommendations to the Cabinet of Ministers and ultimately Parliament as required.

Investors and lenders recognize that SEFIL is consistent with international practices, because Mongolia has the sovereign right and responsibility to subject FDI to national security and anti-trust reviews. However, investors tell us that they are extremely concerned about the potential level of GOM and parliamentary involvement with FDI in the targeted sectors. SEFIL's remit grants the GOM broad authority to interfere in day-to-day management decisions, over and above crucial decisions on investment, capital spending, and share acquisition; and makes it difficult to plan investments and raises risks of open-ended government intervention to potentially unacceptable levels.

Although the Constitution of Mongolia appears to bar retroactive application of both criminal and civil statutes, investors have told us they remain concerned over whether the GOM will retroactively apply SEFIL to foreign investments made before the law entered into force; and if the government will force companies to divest assets to come into compliance. Given negative perceptions, investors have stated that a definitive and official statement from the appropriate government of Mongolia entity regarding the non-retroactivity of SEFIL would quell persistent doubts.

Pending regulations governing SEFIL's application may answer many of these questions. Officials have promised to consult with stakeholders in advance of approving any set of regulations.

Limitations on Participation in Real Estate, Petroleum Extraction, and Strategic Minerals Deposits, and Law Practice

Only Mongolian citizens can own real estate. Ownership rights are currently limited to urban areas in the capital city of Ulaanbaatar, the provincial capitals, and the county seats (called *soums*). No corporate entity of any type, foreign or domestic, may own real estate. However, foreigners and Mongolian and foreign firms may own structures outright and can lease property and obtain use rights for terms ranging from one (1) to ninety (90) years. Mongolian law and regulation generally cedes control of the land, usually through lease, to the owner of the structure built upon a given piece of property.

Mongolian law also requires oil extraction firms to enter into production sharing contracts with the government as a precondition for both petroleum exploration and extraction. However, investors in Mongolia's nascent unconventional hydrocarbon sector suggest that the current statutory and regulatory framework

does not allow for exploration and extraction of these resources. The GOM has told investors that it will craft new legislation to deal with these concerns.

Passed in 2006, Mongolia's current Minerals Law enacted the concept of the ***strategic deposit,*** which empowers the GOM to obtain up to a 50% share of any mining enterprise on or abutting such a deposit.

The current law defines "a mineral deposit of strategic importance" as *"a mineral concentration where it is possible to maintain production that has a potential impact on national security, economic and social development of the country at national and regional levels or deposits which are producing or have potential of producing above 5% of total GDP per year."* Ultimately, the power to determine what is or is not a strategic deposit is vested in the State Great Hural (Parliament). To date, the GOM has only identified two world class copper and coal reserves, some iron ore deposits, and all deposits of rare earths and uranium as reaching this threshold.

If a mineral deposit is labeled strategic and if the state has contributed to the exploration of the deposit at some point, the GOM may claim up to 50% ownership of the operating entity that may ultimately mine the resource. If the deposit is explored with private funds and the state has not contributed to the exploration of the deposit, the GOM may acquire up to 34% of that entity.

State participation (or share) is determined by an agreement on exploitation of the deposit considering the amount of investment made the state; or, in the case of a privately-explored strategic deposit, by agreement between the state and the firm on the amount invested by the state. Parliament may determine the state share using a proposal made by the government or on its own initiative using official figures on minerals reserves in the *Integrated State Registry*.

Importantly, the state equity provision is not expropriatory on its face, because the GOM has committed itself to compensating firms for the share it takes at fair market value. So far, the GOM has honored this commitment, as experience with the OT Investment Agreement confirms.

In addition, the 2006 Minerals Law and Petroleum Law restrict licenses to entities registered in Mongolia under the terms of the relevant company and investment laws. A foreign entity, in its own right, cannot hold mining or petroleum licenses. Should a foreign entity acquire a given license as either collateral or for the purpose of actual exploration or mining, and fail to create the appropriate

Mongolian corporate or financial entity to hold a given license, that failure has served, and continues to serve, as grounds for the GOM to invalidate the license. In essence, the foreign entity may lose its security or its mining rights. We advise investors with specific questions to seek professional advice on the status of their licenses.

Since 2010, the President of Mongolia, members of Parliament, and successive government officials have questioned whether the 2006 Minerals Law adequately protects Mongolian national interests; and have engaged in long debate on how to reform Mongolia's administration of mining to ensure that foreign investment does not compromise Mongolia's perceived rights. Currently, two distinct draft amendments from Parliament and the President of Mongolia are working their respective ways through Parliament with some resolution expected in spring 2013. Investors indicate they want Parliament to agree on a set of laws that brings certainty and clarity to a legal environment that has been in flux for years.

Proposed Amendments to the 2006 Minerals Law

In December 2012, the President of Mongolia offered amendments to the 2006 Minerals Law. The President's Office says that the draft is largely modeled after international practices, particularly those employed in Australia; however, Australian investors and others familiar with Australian mining rules and legislation see no resemblance in President's draft.

Both domestic and foreign investors have unanimously and unambiguously responded negatively to these amendments. They argue that the amendments grant the government broad and vague discretionary authority to revoke exploration and mining rights without meaningful checks on these powers; and impose taxes and fees, development obligations, and production, management, and employment practices that may render commercial mining impossible in Mongolia.

Uranium and Environmental Laws Negatively Affect Investor Rights

The 2009 Uranium Law of Mongolia

In 2009 the Parliament imposed significant new controls on mining and processing uranium (and some rare earths) in Mongolia. The law created a new regulatory agency, the Nuclear Regulatory Energy Agency of Mongolia (NEA), and a state-owned holding company, MonAtom, to hold assets that the government acquires from rights holders. The law imposes several conditions:

- Requires all holders to register uranium exploration and mining licenses with the NEA;

- Requires investors to accept that the Mongolian state has the right to take -- without compensation -- at least 51% of the mining enterprise -- as opposed to mining rights -- as a condition for developing any uranium property;

- Imposes a uranium-specific licensing, regulatory regime independent of the existing regulatory and legal framework for developing mineral and metal resources. Prior to the Nuclear Energy Law, exploration licenses gave their respective holders the rights to discover and develop any and all mineral and metal resources discovered within that license area. (This does not include petroleum resources, which are governed separately). According to GOM officials, this law lets the state issue a distinct license for uranium exploration on a property otherwise dedicated to other mineral and metals exploration.

New Laws Affecting Mining Activities in Water Basins and Forested Areas

In May 2012, Parliament passed a suite of environmental legislation:

- Law on Air
- Law on Air Pollution Fees
- Law on Soil Protection and Prevention of Desertification
- Law on Waste
- Law on Forest
- Law on Water
- Law on Animals
- Law on Natural Resource Use Fees
- Law on Water Contamination
- Law on Environmental Impact Assessment

As these are new laws, the regulations of which have yet to be promulgated, neither we nor observers know how they will impact projects in Mongolia. However, it is clear that the Water Law and the Forest Law have effectively replaced the 2009 *Law on Prohibition of Minerals Exploration and Mining Activities in Areas in the Headwaters of Rivers, Protected Water Reservoir Zones and Forested Areas*, more colloquially known as the *Law with the Long Name (LOLN).* The LOLN imposed the following on mining projects:

- Revoked or modifies licenses to explore for or mine any and all mineral resources within an area no less than 200 meters from water and forest resource.

- Required the government to compensate rights holders for exploration expenses already incurred or revenue lost from actual mining operations.

- Empowered local officials to determine the actual areas which can be mined. In effect, the local official can extend the 200 meter minimum at his discretion.

The new laws appear less proscriptive regarding mining activities near water basins and forests; and apparently allow discretion for local and regional authorities, working in concert with the central government, to determine where and when extractive and industrial activities can occur near environmentally sensitive areas. While the 200 meter minimum appears as something of guideline in the two new laws, the new legislation, unlike the LOLN, does allow for flexibility in the imposition of the 200 meter setbacks. Investors are waiting if pending regulation will confirm this flexible concept.

Oyu Tolgoi on Schedule to Commence Operations in Early 2013

In October 2009, the GOM, Ivanhoe Mines of Canada, and Rio Tinto negotiated investment and share-holders agreements for the Oyu Tolgoi (OT) copper- gold deposit located in Mongolia's South Gobi desert. The OT agreements vest the government of Mongolia with 34% ownership of the project and provide guarantees for local employment and procurement. With estimated development costs in excess of US $7 billion and a 40-year plus mine-life, OT is conservatively expected to double Mongolia's annual GDP by the time it reaches full production around 2017. With power contracts with China in place, initial production of copper concentrate is set commence in the first third quarter of 2013.

With construction on the open-pit operation completed, most observers of Mongolia's investment climate still consider this agreement the landmark foreign and domestic investment in Mongolia. The consensus is that the OT agreement:

- Shows Mongolia can say "Yes" to key projects undertaken with foreign involvement and investment;

- Confirms GOM commitment to compensating private rights holders of most deposits considered strategic under the 2006 Minerals Law;

- Demonstrates GOM willingness to amend laws and regulations to enhance and ensure the commercial viability of mining projects.

The positive message of the OT for investors should not be underestimated. Its passage is largely considered responsible for spurring progress on other mining projects and for these projects successful listing on foreign stock exchanges.

However, since 2011 some within the GOM and Parliament have sought to re-open the OT IA that sets the project's legal, tax, and regulatory regime for the next few decades. The issue came to a head again in September 2011 when members of Parliament and a broad array of public and private entities demanded that the GOM void the agreement, claim a larger ownership share of the project, and impose higher royalties. The National Security Council of Mongolia(NSCM)—composed of the President of Mongolia, Prime Minister, and Speaker of Parliament—unilaterally and unanimously declared that the GOM and Parliament would honor the existing agreement without exception in September 2011. Although the NSCM lacks constitutional or statutory power to bind Parliament to any particular course of action on OT, its statement calmed but did not completely remove investor fears that the Mongolian government would not keep its commitments

Resurrecting the issue in September 2012, twenty-three (23) Members of the newly elected Parliament petitioned the government to renegotiate IA. Concerted action by OT LLC, diplomatic missions, and elements of the GOM and Parliament produced agreement to review the issues in a more formal, less acrimonious way. However, matters are unresolved.

Absent an explicit GOM commitment to honor the IA, the business community questions the sanctity of contracts in Mongolia. Left unaddressed, uncertainty over OT's future may raise investor risk perceptions and limit FDI in Mongolia, thus inhibiting domestic development and employment from the resource sector.

Recent Amendments to the Practice of Law in Mongolia

In 2012, Parliament amended the *Law on Lawyers*, adding new restrictions on foreign-owned and operated law offices. Previously, law offices could be owned and operated by foreign lawyers and parties. Entering into effect April 2013, the amendments require foreigners to pass the Mongolian bar examine as a condition of owning or operating law firms in Mongolia.

Completing Reform of the Securities Law of Mongolia

Essential reforms to the *Securities Law of Mongolia* remain incomplete. Most observers see the current law as insufficient and obsolete, and the consensus is that an up-to-date law would:

- Formally distinguish between beneficial owners and registered owners.

- Allow for Custodians (financial institutions with legal responsibility for investors' securities).

- Institute new rules that would allow companies *listed* on the Mongolian Stock Exchange (MSE) to list their shares on other exchanges.

An amended securities law, consistent with practices, regulation, and statue used by other exchanges, will allow Mongolia to list and raise capital for important projects, such as Oyu Tolgoi and Tavan Tolgoi. Without such a law, Tavan Tolgoi and other public and private investments will face severe impediments to raising capital and valuing assets. Amendments to current Securities Law remain before the Cabinet but are not expected to pass Parliament before mid-2013.

Revisions of the Mongolian Tax Code

Revocation of Double Taxation Treaties (DTTs)

Mongolia is leaving its DTTs with the Netherlands, Kuwait, Luxembourg, and the United Arab Emirates; and may do so for all other DTTs it maintains. The GOM argued (with some correctness) that many companies using these DTTs were not actually headquartered in the nations with bilateral DTTs and were using the treaties to avoid taxation in Mongolia, denying Mongolia substantial revenues. The GOM asserted that it would not have entered into these treaties if it had fully understood their implications, although the IMF had long advised the GOM to be wary of DTTs impact on revenues.

Foreign and Mongolian domestic investors have strongly criticized the government and Parliament for revoking key DTTs. Viewed from the context of the recently passed Strategic Entities Foreign Investment Law (SEFIL), the chronic attempts to change the OT Investment Agreement and moves to amend other laws affecting investment in Mongolia, investors argue that revoking DTTs sends a clear message that Mongolia does not fully respect contractual or treaty obligations.

Other Tax Code Issues

The 2007 code taxes all salary and wage income at 10% while allowing interest income from securities and capital gains to be tax free until 2013. As of January 2013, all types of income will be taxed at a rate of 10%.

Businesses are taxed at 10% for profits less than 3 billion Tugriks (US$ 2.2 million) and at 25% for any profit 3 billion Tugriks or above. The Value Added Tax (VAT) is currently10%. Mongolia also imposes a variety of excise taxes and licensing fees upon a variety of activities and imports.

Mongolia also imposes a 20% withholding tax on interest earned on foreign-held, interest-bearing banking accounts and other deposit types.

The OT project has had a salutary effect on key tax provisions long-desired by foreign and domestic investors alike. Before OT, firms could only carry-forward losses for two (2) years after incurring the loss. While most businesses approved of this provision, many, especially those requiring large and long-term infrastructure development, noted that the two year carry-forward limit was insufficient for projects with long development lead times, as is typical of most large-scale mining developments. As a condition precedent of passing the OT Agreement, Parliament extended loss-carry forward to eight (8) years.

On the down side, Mongolia's Parliament has revoked and refuses to reinstate an exemption available on value-added taxes (VAT) of 10% on equipment used to bring a given mine into production, except on equipment to be used in the production of highly processed mining products.

Most jurisdictions, recognizing that mines have long development lead times before production begins, either waive or impose no tax such on imports at all. Parliament, with no consultation with investors, international experts, or its own tax officials, chose to impose the VAT, which immediately makes Mongolian mining costs 10% higher than they would otherwise be, impairing competitiveness and dramatically varying from global practice. Whether any mining output qualifies for this exemption seems completely at the discretion of the GOM, which has not set out in regulation or statute a process by which it will regularly adjudicate such VAT exemption requests.

Unfinished Business with Administering Taxation (and other functions)

International financial institutions and foreign and domestic investors report that enhancing Mongolia's business environment requires that reform must also include improving how key agencies—the tax department, the customs administration and the inspections agency—interact with firms and individuals.

Specifically, many investors have reported increasingly abusive enforcement by elements of the Tax Authority, the Anticorruption Agency, and the National Police in 2012. Officials show up unannounced, and without formal writs authorizing their activities, accuse the business of committing some sort of tax fraud or other abuse, and order immediate payment or compliance with demands. If the business refuses to comply, insisting on its rights under law and regulation, the officials immediately threaten to turn the case over to the Anticorruption Agency or the National Police—an act which can lead to seizure of assets, closure of the business, and detention or arrest of personnel while under investigation. In some cases, officials have followed through on these threats. Because the law lays out no clear way to determining when a matter is criminal or civil, officials have discretion on how to proceed, raising the perception of risk among investors.

Public Private Partnership/Concession Law

In 2010, Parliament passed legislation authorizing the government to tender concessions for certain functions and to enter into public-private partnerships (PPPs) in a variety of areas. Hundreds of separate projects—ranging from key power projects to major rail expansions to the north, east, and south to education centers—are listed as available for private entities to engage with the GOM.

The GOM aims to enlist private industry to support social and economic development by ostensibly providing commercial incentives for participation. However, while approving the concept in principle, foreign and domestic investors criticize the operative legislation. Chiefly, potential investors relate that they see few incentives in the design of the PPPs. As currently envisioned, most Mongolian PPPs seem to allow for recovery of costs and a very limited horizon for operation (and profit generation) before the asset must be returned to the GOM. In essence, investors argue that the GOM wants them to act like fee-for-service contractors but declines to compensate as they would such a contractor.

Until the GOM amends these unattractive features, investors will likely pass on Mongolia’s PPP opportunities.

The Mongolian Judiciary and the Sanctity of Contracts

Generally, investors report no concerted, systematic, institutional abuse specifically targeted at foreign investment. Issues of corruption and judicial partiality aside, observers argue that most problems reflect ignorance of commercial principles rather than antipathy to foreign investment as such. (See A. 13 for a detailed discussion of corruption in Mongolia.) In principle, both the law and the judiciary recognize the concept of sanctity of contracts. However, the practical application of this concept lags, with both foreign and domestic investors reporting inconsistent enforcement of contracts by the judiciary. This inconsistency comes from the slow transition from Marxist-based jurisprudence to more market oriented laws and judicial practices. As more judges receive commercial training and gain practical experience, observers expect gradual improvement of the entire judicial system.

However, hoped for improvements aside, many investors perceive that the courts will side with Mongolian disputants in strictly commercial cases involving business to business disputes, regardless of relevant laws, regulations, and contractual obligations. (See Chapter A.4 for a discussion of the role of the judiciary in dispute settlement.).

Concerns over Exit Visas

Regularly reported since 2010, Mongolian public and private entities continue to abuse the exit visa system to pressure foreign investors to settle civil and commercial disputes. Immigration officials normally issue a *pro forma* but required exit visa at the port of departure (e.g. the international airport), but may deny or revoke an existing visa for a variety of reasons, including civil disputes, pending criminal investigations, or for immigration violations. If denied for a civil dispute, the visa may not be issued until either the dispute is resolved administratively or a court has rendered a decision. Neither current law nor regulation establishes a clear process or time-table for settlement of such issues. Nor does the law allow authorities to distinguish a criminal and civil case when detaining a person. In fact, the Mongolian government maintains the right to detain foreign citizens indefinitely without appeal until the situation has been resolved.

Research reveals that abuse of the exit-visa system also affects investors from countries other than the U.S. All cases have a similar profile. A foreign investor has a commercial dispute with a Mongolian entity, often involving assets,

management practices, or contract compliance. The Mongolian entity responds by filing either civil or criminal charges with local police or prosecutorial authorities. It is important to note that at this point there need be no actual arrest warrant or any sort of official determination that charges are warranted: mere complaint by an aggrieved party is sufficient to deny exit.

An investor in this situation is effectively detained in Mongolia indefinitely. Some foreign investors have resolved these impasses by settling, allowing them to depart Mongolia. If unwilling to settle, the foreign investor will have to undergo the full investigatory process, which may lead to court action. Investigations commonly take up to six months, and in one case an American citizen could not depart Mongolia for over two years while under criminal investigation for a failed business deal. In addition, even if a dispute seems settled, it can be re-filed in the same venue —if local police and prosecutors are willing—or in a different venue.

Mongolian citizens require no exit visas to depart Mongolia and can only be denied exit or detained if an actual arrest warrant has been issued.

Privatization Policies and Resistance of Mongolian firms to Foreign Investment

Privatization policies have favored foreign investment in some key industries, including banking and cashmere production. The bidding processes for privatizations and other tenders have generally been transparent. Although the GOM routinely announces plans, we have seen little real movement to privatize state holdings in the aviation, telecommunications, power, and mining sectors. Ongoing GOM acquisitions of mining assets– especially in uranium, rare earths, and coal – indicates that the GOM will expand the state's role in some areas.

That said, the GOM continues with plans for initial public offerings (IPO) for certain state-owned power, infrastructure, and mining holdings. It has stated that funds from such IPO'S will be used to underwrite these projects and to pay for needed infrastructure. To date, the IPO discussion has not moved beyond the conceptual level. The GOM has told the Mongolian public and investors that it will hold an international IPO for at least one mining asset, specifically the world-class Tavan Tolgoi (TT) coking project as early as spring, 2013; and has sought advice from international investment advisors to achieve this end. However, beyond talk of IPO's, the GOM has made insufficient progress to create a functional coal mine at TT that could be capitalized through an IPO.

While most observers believe a TT IPO is viable in the long run, they argue that the GOM's 2013 time table is too ambitious given that TT remains an undeveloped, remote Gobi site with little infrastructure, owned by a government that has no track record in bringing such projects into operation.

Mongolian Businesses vs. Foreign Direct Investors

Other than the limitations imposed by the *Strategic Entities Foreign Investment Law of 2012 (SEFIL)*, foreign companies and investors are subject to the same legal regime imposed on Mongolian domestic firms regarding incorporation and corporate activities.

Generally, Mongolian private businesses seek foreign participation and equity in all sectors of the economy. However, some Mongolian businesses use Mongolian institutions to stop competitors, if they can. These actions represent no animus against foreign investment as such; rather, they reflect individual businesses desire to keep competitors, Mongolian or foreign, at bay.

Key Investment Laws

Foreign Investment Law of Mongolia

The Foreign Investment Law of Mongolia (FILM)—not to be confused with the SEFIL of 2012—transformed the anti-business environment of the socialist era into today's regime. Under the old system, everything not provided for in law was illegal. Because such economic activities as franchising, leasing, joint venture companies were not specifically mentioned in earlier Mongolian statutes, they were technically illegal. In 1993, the GOM enacted FILM to legalize all manner of foreign investment in Mongolia (amended in 2002 to allow for representative offices and franchises).

This law and its subsequent amendments define broad ranges of activity that would otherwise have limited validity under Mongolian law. It also defines the meaning of foreign investment under the civil code without limiting activities that foreign investors can conduct. FILM also establishes registration procedures for foreign companies: The law requires investments with 25% or more of FDI to register as foreign-invested firms. The law created a supervisory agency, the Foreign Investment and Foreign Trade Agency (FIFTA), that ran the registration process, liaised among businesses and the Mongolian government, and promotes in- and out-bound investments. Under the Terms of SEFIL and 2012 re-organization of

the GOM, FIFTA was abolished and its functions transferred to the newly-created the Foreign Investment Regulation and Registration Department (FIRRD) under the new Ministry of Economic Development.

In 2008, the Parliament of Mongolia amended FILM. The stated intent of the revision was to improve FIFTA's—now FIRRD's— ability to track foreign investment and to enhance services to foreign investors. The 2008 FILM requires foreign investors to invest a minimum of US$100,000 and imposes a series of requirements on foreign investors seeking registration. Registered foreign companies must have FIRRD certify that their by-laws, environmental practices, their technologies, etc., comply with standards determined by FIRRD.

Since FILM's passage, foreign investors have expressed concern over what they perceive as the government's broad and seemingly un-transparent regulatory authority. As with its predecessor FIFTA, FIRRD officials report that procedures are still under evaluation and development but investors continue to claim that this drafting process lacks transparency and offers them no clear way to comment upon regulations that will affect investments. Investors still tell us that they do not know the exact standards FIRRD will apply for any given investment; how it will determine those standards; and how an investor might seek redress if FIRRD denies a registration request.

Ministerial Structure Related to Foreign Investment

As a result of the parliamentary elections of 2012, the current structure of government has changed. The government has expanded from 13 ministries to 16. The principle change affecting foreign investors has been the creation of the Ministry of Economic Development (MED). The new government transferred all trade and investment related functions from the former Ministry of Foreign Affairs and Trade (MFAT) to MED. MED now administers FDI in Mongolia. The independent trade promotion agency FIFTA, formally housed under the now defunct MFAT, has become FIRRD, under the explicit authority of MED. FIRRD is the frontline administrator for SEFIL. MED also has the remit to develop trade policy and conduct trade-related negotiations with other nations; and crafts, coordinates and assists with the implementation of all government economic development policies and projects. For those investors not affected by SEFIL, the new structure should not affect the day-to-day conduct of their businesses.

Mongolia's Ranking as a Place to Do Business

Measure	**Year**	**Index/Ranking**
TI Corruption Index on *Corruption Perceptions:* (http://cpi.transparency.org/cpi2012/results/)	2012	*36/100*
Heritage Economic Freedom (http://www.heritage.org/index/country/mongolia)	2012	*World Ranking*:**81/179** *Freedom Score*: 61.5
World Bank Doing Business (http://www.doingbusiness.org/data/exploreeconomies/mongolia)	2012 2013	Doing Business: 86/185 Doing Business: 76/185
MCC Government Effectiveness: http://www.mcc.gov/documents/scorecards/score-fy13-mongolia.pdf	FY 2013	-0.17 (34%)
MCC Rule of Law	FY 2013	0.12(66%)
MCC Control of Corruption	FY 2013	-0.16 (25%)
MCC Fiscal Policy	FY 2013	-2.4 (67%)
MCC Trade Policy	FY 2013	79.8 (72%)
MCC Regulatory Quality	FY 2013	0.12 (66%)
MCC Business Start Up	FY 2013	0.988 (94%)
MCC Land Rights Access	FY 2013	0.66 (39%)
MCC Natural Resource Protection	FY 2013	69.3 (69%)
MCC Access to Credit	FY 2013	43 (69%)
MCC Inflation	FY 2013	7.7 (24%)

A.2 CONVERSION AND TRANSFER POLICIES

Foreign and domestic businesses generally report no regular problems converting or transferring investment funds, profits and revenues, loan repayments, or lease payments into whatever currency they wish to wherever they wish. There usually is no difficulty in obtaining foreign exchange, although large transactions may be affected by availability of the required currency.

Current law requires all domestic transactions be conducted in Mongolia's national currency, the Tugrik, except entities granted limited waivers for non-Tugrik transactions by the Mongolia's central bank, the Bank of Mongolia (BOM). Businesses report no regular delays in remitting investment returns or receiving in-bound funds. Transfers generally require 1-2 business days or, at most, a single business week. (For details on Mongolia's conversion and transfer policies, please refer to the Bank of Mongolia: http://www.mongolbank.mn/eng/default.aspx.)

Ease of transfer aside, foreign investors note Mongolia's lack of regular access to mechanisms for facilitating trade and investing cash balances. Letters of credit are difficult to obtain, and legal parallel markets in the form of government dollar or Tugrik-denominated bonds or other instruments for investing cash in lieu of payment are nascent. In regard to the latter, the government auctioned 270 billion Tugriks (US$ 200 million) of 12- and 28-week bills in December and has scheduled weekly auctions in the first half of 2013.

Because these mechanisms are in their early days, the immediate impact of their lack has been to limit access to certain types of foreign capital, as international companies resist maintaining cash balances in Mongolian banks or in local debt instruments. That said, the government of Mongolia, the BOM, and several donor agencies are continuing efforts to develop and deploy such instruments by 2013.

A.3 EXPROPRIATION AND COMPENSATION

Mongolia has generally respected property rights as they apply to most asset types. However, investors suggest that the *2012 Strategic Entities Foreign Investment Law of Mongolia* (SEFIL) limits foreign ownership of assets and use rights in three strategic sectors, among them natural resource extraction. Investors suggest that SEFIL may require foreign investors to seek local partners and source goods and services locally. This legislation is consistent with, and represents a continuation of, actions that represent both "creeping expropriation" and explicitly expropriatory acts sanctioned through force of law, especially but not exclusively limited to the resource extraction sector.

Expropriatory Aspect of the Strategic Entities Foreign Investment Law (SEFIL)

Investors suggest that some of SEFIL's provisions seem expropriatory. Of particular concern, investors worry that the GOM will retroactively apply SEFIL to foreign investments made before the law entered into force and will force companies to divest assets to come into compliance, with no apparent provision made to compensate investors for losses incurred to comply with SEFIL. Given these negative perceptions, investors have stated that a definitive and official clarification from the government of Mongolia would quell persistent doubts. For a fuller description of SEFIL's provisions see Chapter A.1.

Security of Ownership

The U.S.-Mongolia Bilateral Investment Treaty (BIT) entered in force in 1997, and specifically enjoins both signatories from expropriatory acts against private property and investments. In addition, both Mongolian law and the national Constitution recognize private property rights and the rights associated with its use, and specifically bar the government from expropriating such assets. To date, the government of Mongolia (GOM) has not expropriated any American property or assets. However, observers suggest that the GOM's use of the Nuclear Energy Law to revoke a Canadian company's uranium exploration rights without compensation is expropriatory; and infer from this action that GOM will revoke use rights and resist compensating companies for revocations. (For a copy of BIT: http://www.state.gov/e/eeb/ifd/43303.htm.)

Like most sovereigns, the Mongolian government may exercise eminent domain in the national interest. Under the current land law, Mongolian state entities can claim land or modify use rights for the following purposes:

- Lands under special government protection;
- Land near national borders;
- Lands given for ensuring national defense and security;
- Land given to foreign diplomatic missions and consulates, as well as resident offices of international organizations;
- Land for scientific and technological tests, experiments and sites for regular environmental and climatic observation;
- Aimag level reserve rangelands;
- Hayfields for government fodder reserves.
- Contracted petroleum exploration sites to be utilized according to product sharing contracts;
- Free trade zone areas.
- Building and using nuclear reactors.
- Governors of aimags, Ulaanbaatar Capital City, and soums may take land for special needs of the local government for the purposes referred to in provisions of the law.
- Land belonging to any classification of the unified land territory may be taken for special needs.

Investors have expressed little disagreement with most of these categories but express concern over the taking of land for *special needs* by local municipal governments and provincial administrations. As the relevant statutes do not definitively define what constitutes *special needs*, officials have broad discretion in determining what is and is not a *special needs zone*.

With regard to the issuance of both exploration permits and mining licenses, observers routinely report that provincial officials use their authority arbitrarily to block access to mining rights legally granted under the current law. For example, reports regularly circulate that some provincial government officials use their authority to designate land as *special needs zones* to usurp mining exploration tenements. Commonly, provincial governors often reclassify property that has never felt the touch of the plow or felt the tread of a tourist for agricultural use or cultural tourism respectively, although the central government has legally granted exploration rights to miners.

Other investors criticize seemingly arbitrary use of the local officials' rights to "comment" on permits for water use and mining licenses. Under the current law, comments are advisory, and have limited legal force to disallow activity, but the central government hesitates to reject a governor's negative comment no matter the

motives behind it. The effect has been to stop progress for months, limiting access to the resource and costing rights holders' time and money. Whatever the motive, investors see these actions as creeping bureaucratic expropriation through denial of access and use rights.

The 2006 Minerals Law provides no clear limit on provincial control of permits and special use rights or guidance on how to apply these powers beyond codifying that the provincial and local authorities have some authority over activities occurring in their provinces and soums (counties). Faced with these unclear boundaries of authority, the central government often interprets the rules and regulations differently from the provincial authorities, creating administrative conflicts among the various stakeholders. The central government acknowledges the problematic ambiguity but has yet to clarify the situation in law or practice. Mongolian and foreign permit holders have advised the government that letting this problem fester raises perceptions among investors that they may risk losing their economic rights.

I: Expropriatory Potential of the Current Minerals Laws

2006 Minerals Law

Investors suggest that the Minerals Law potentially denies access to use rights without formally revoking these rights. The law does not allow the GOM to usurp rights to explore and exploit natural mineral, metal, and hydrocarbons resources per se. Instead, the law imposes procedural requirements and grants powers to central, provincial, and local officials - powers that, if abused, might prevent mineral license holders from exercising their exploration or mining rights.

An example is the tender process for apportioning some exploration rights. The old law awarded exploration rights on a "first come, first served" basis, a process that gave little discretion to government officials to intervene. The current law establishes a different procedure for obtaining exploration rights on land explored with state funds or lands where the current holder has forfeited exploration rights. The Mineral Resources Authority of Mongolia (MRAM) will tender such exploration rights only to firms technically qualified to conduct minerals work. The current tender procedure neither requires nor allows for cash bids. Ostensibly, only the technical merits of exploration proposals will determine who gains exploration rights. MRAM staff has the authority and responsibility to assess the merits of proposals to determine who wins the tenders.

Both MRAM and its new supervising authority, the recently created Ministry of Mining, have broad discretionary authority to select who wins exploration rights. Under the current system, a company can prospect virgin territory and scope out a potential exploration site, only to risk losing the site should MRAM decide to auction those rights to other exploration companies. This power disturbs miners, who see it as a potential source of corruption and arbitrary decisions by MRAM.

Expropriatory Potential of the 2009 Nuclear Energy Law (NEL)

The NEL requires investors to accept that the Mongolian state has the absolute right to a free-carried share of no less than 51% of the mining company that will develop and operate the mine as a condition of being allowed to develop any uranium property. (For a review of the NEL's key provisions, see Chapter A.1.)

Many foreign and domestic investors consider this non-compensated acquisition of uranium assets as form of statutorily-sanctioned expropriation, which heretofore had not been practiced by the government of Mongolia. Although the Minerals Law, other relevant laws, and the Constitution of Mongolia state that the GOM must compensate rights holders for any taking, the NEL gives the GOM the right to take uranium holdings with no obligation to compensate rights holders. Complicating the issue is that the law seems to conflate the deposit and the company mining it, allowing the GOM to claim an uncompensated share in any such entity. In effect, the GOM is demanding a free-carried, non-compensated interest of no less than 51% of any uranium mine. The GOM has stated that this licensing regime also applies to deposits of radioactive rare earths.

Observers argue that ongoing implementation of the NEL validates fears of expropriation. In 2010, the GOM acted against a Canadian company in what observers defined as a taking of the company's rights to develop a uranium deposit without apparent due process or compensation. The GOM has vested those rights in a Russian-Mongolian state-owned company. The Canadian firm has sought to settle its claims through international arbitration and expects a decision in 2013.

National Security Concerns May Lead to Loss of Rights

In 2010, the President of Mongolia used his authority as head of the National Security Council of Mongolia (NSCM) to suspend the issuance and processing of both mining and exploration licenses. He argued that the flaws of the licensing regime constituted a threat to national security that justified the NSCM suspending issuances. Domestic and foreign investors and Mongolian government officials

disputed this moratorium, claiming that neither the President nor the NCSM had neither constitutional nor statutory authority to supersede the government's regulatory authority over mining. A constitutional crisis was only averted when Parliament imposed a moratorium on the issuance of the certain types of mineral licenses. Having expired at the end of 2012, Parliament extended the moratorium through 2013, pending amendments to 2006 Minerals Law.

Since this initial move, the NSCM has made additional forays into regulating commercial activities. In 2011, NSCM powers were formally used to assure that the Mongolian state would honor the OT investment agreement and reject a proposed consortium agreement for the Tavan Tolgoi coking coal project. Observers also noted that the NSCM had informally involved itself in specific mining projects centering on coal conversions, urging that licenses and use rights be revoked or granted for national security reasons. In all cases, NSCM justified its involvement by claiming that neither Parliament nor the GOM would be able to render appropriate, timely decisions on the projects in question, necessitating definitive action by the NCSM on the grounds that lack of action constituted some sort of national security threat.

No NSCM, to our knowledge, has used its power so broadly and publicly to intervene in activities not normally associated with national security. GOM officials have explained that the powers granted to the NSCM are quite broad and without any apparent institutional limit in emergency situations. However, these same officials claim that neither the OT agreement, nor TT, nor mining licenses, nor specific commercial or state-owned projects rise to the level of national security threat as defined by statute. Consequently, it seems the NSCM has no statutory or constitutional remit to act in areas clearly the responsibility of either the government or Parliament.

Investors remain ambivalent over NSCM interventions into the commercial realm. On the one hand, they are relieved that at least one Mongolian institution has acted to stabilize important national projects (OT and TT) and associated rights. On the other hand, they question the practicality of subjecting regional and local projects or such day to day activities as issuing permits and licenses to a highly-politicized, non-transparent set of security criteria more appropriate to mega projects.

How the Amendment Process Affects Mineral Rights

Going into 2013, investors remain concerned that merely proposing amending a given law seems to freeze, or at least significantly slow, the Mongolian regulatory

process; which consequently threatens exercise of rights granted under current law. For example, the ongoing amendment process to the 2006 Minerals Law has adversely affected the regime for issuing exploration and mining licensing.

In 2010, the President of Mongolia announced his concerns about the existing licensing regime, which set into motion an amendment process for the entire law. This process, well into its third year, has produced numerous draft amendments between the government and Parliament. Although the 2006 Minerals Law remains in force, officials at all levels delay, or openly refuse to process, normal requests for extending or issuing exploration and mining licenses. They justify delay and refusal by stating that the amendment process renders the current law "effectively" invalid because any act may face *post facto* changes under a new statute. In certain cases, we have reliable reports of officials threatening to revoke currently valid licenses under the pretext that such would be "illegal" under draft legislation—that is, un-ratified amendments.

Overall, business observers suggest that the amendment process for mining and other laws has generated lengthy and costly bureaucratic delays for many commercial sectors, especially in mining; and thus raised the perceived risk that officials will reject permits and licenses executed in good faith under valid laws under the pretext that the law will change in the future.

A.4 DISPUTE SETTLEMENT

Observers indicate that the GOM inconsistently supports transparent, equitable dispute settlements. These inconsistencies largely stem from both a lack of experience with standard commercial practices and the opportunistic targeting of foreign investors by some public and private entities. The framework of laws and procedures is functional, but many judges and officials remain ignorant of commercial principles as well as partial to Mongolian plaintiffs and defendants in disputes with foreign investors.

Problems with Dispute Settlement in Mongolia's Courts

Court structure is straightforward and can support dispute settlement. Disputants know the procedures and the venues. Mongolia does not use juries in court proceedings; rather, plaintiffs bring cases at the district court level before a single district judge or a panel of district judges, depending on the complexity and importance of the case. The district court renders its verdict. Either party can appeal this decision to the Ulaanbaatar City Court, which rules on matters of fact as well as matters of law. It may uphold the verdict, send it back for reconsideration or vacate the judgment. A disputant may then take the case to the Mongolian Supreme Court for a final review. Matters regarding the constitutionality of laws and regulations may be taken directly before the Constitutional Court of Mongolia (the *Tsetz*) by Mongolian Citizens, Foreign Citizens, or Stateless Persons residing legally in Mongolia.

Problems with dispute resolution arise for several reasons. First, commercial law and broad understanding of it remain in flux in Mongolia. It has become necessary to pass new laws and regulations on contracts, investment, corporate structures, leasing, banking, etc., because generally Mongolian civil law does not work from precedents but from application of the statute as written. If a law is vague or does not cover a particular commercial activity, the judge's remit to adjudicate can be severely limited or non-existent. For example, until recently leasing did not exist in the Mongolian civil law code as such, but seemed to be covered under various aspects of Mongolian civil law regarding contracts and other agreements. But judgments on leasing made under these laws might not have applied to an arrangement not otherwise specifically recognized under its own exclusive law. Further, because precedents are not legally relevant or binding on other judges and Mongolian courts, decisions reached in one case have no legal force in other suits, even when the circumstances are similar or even before the same court and judges.

In addition, many judges lack training in, or remain ignorant of, commercial principles, in some cases willfully. Most observers argue that this view is not a problem of the law but of faulty interpretation. For example, they dismiss such concepts as the sanctity of contracts. In several cases courts have misinterpreted provisions regarding leases and loan contracts, allegedly intentionally in some cases. Judges regularly ignore contract terms in their decisions. If someone defaults on a loan, the courts often order assets returned without requiring the debtor to compensate the creditor for any loss of value. Judges routinely assert that the creditor has recovered the asset, such as it is, and that is enough. Bad faith and loss of value simply have no formal standing in judicial calculations of equity.

Judicial and Arbitral Prejudice Against FDI

Investors inform us of numerous and consistent accounts where rulings apparently ignore contract terms. Further, the judges adjudicating such cases have told investors or to third party intermediaries that such decisions are justified based on the foreign identity of the plaintiff or defendant. Examples of arguments include: the foreign investor can afford the loss; the foreigner must be stealing from Mongolia in some way and so deserves to lose; or that Mongolian judges must support Mongolians or risk being accused of being unpatriotic. While the validity and accuracy of these claims is difficult to assess, the number and consistency of the complaints suggest that that Mongolia's judiciary is not treating foreign investors equitably

Bankruptcy and Debt Collection

Mongolia's bankruptcy provisions and procedures for securing the rights of creditors need comprehensive reform. Mongolian law allows for mortgages and other debt instruments backed with securitized collateral. However, rudimentary systems for determining title and liens and for collecting on debts make lending on local security risky. Banks frequently complain that onerous foreclosure rules are barely workable and unfair to creditors.

Although a system exists to register immovable property—structures and real estate—for the purpose of confirming ownership, the current system does not record existing liens against immovable property. Nor does a system currently exist to register ownership of, and liens on, movable property. Consequently, lenders face the added risk of lending on collateral that debtors may not actually own or which may have already been pledged as security for another debt.

Since 2008, the Millennium Challenge Corporation (MCC) has worked with the GOM to create a modern and efficient property registration regime. The project is expected to increase access to loans and property investment for households. In addition, the project aims to streamline the business registration process and reduce the time and cost of property registration. The urban component of the MCC-funded Property Rights project has improved Mongolia's property registration system and helped households obtain title to land in urban "ger" districts. The project is working in eight provinces and in the capital city of Ulaanbaatar. Progress to date includes the renovation of eleven property registry buildings, training of citizens and officials, the digitization of some 7.5 million pages of land registry records, and the strengthening of cadastral mapping capacity. For program details: http://www.mca.mn/?q=eng/Project/PropertyRights.

Overall, the legal system does recognize the concept of collateralized assets as security for loans, investment capital, and other debt-based financial mechanisms. The legal system also provides for foreclosure, but this process is exceptionally bureaucratic and time consuming. Waits of up to 36 months for final liquidations and settlement of security are not uncommon.

Bankruptcy is an option on paper, but we can offer no example of a successful bankruptcy process. Indeed, local law firms suggest that the process is so apparently vague and onerous that the option is more a theoretical concept than practical step to wind down a business.

Purchase financing remains tricky. Numerous cases have come to our attention in which domestic and foreign distributors finance sales, complete with a local bank guarantee. Buyers subsequently default on loans, banks refuse to honor their guarantees, and the dealers take the buyer to court. Under current Mongolian law, interest payments are suspended for the duration of such a case, from first filing to final appeal before the Supreme Court of Mongolia. Thus months of interest-free time can pass while the now impounded asset wears away. In such cases, dealers simply reclaim the asset and drop the lawsuit, swallowing the lost interest payments and loss of value. Domestic and foreign businesses often respond by requiring customers to pay in cash, limiting sales and economic expansion.

Binding Arbitration: International and Domestic

The Mongolian government generally supports and has submitted to both binding arbitration and international settlement procedures. However, glitches remain in local execution. Mongolia ratified the Washington Convention and joined the

International Centre for Settlement of Investment Disputes in 1991. It also signed and ratified the New York Convention in 1994.

To our knowledge, the government of Mongolia has accepted international arbitration in several disputes where claimants have asserted the government reneged on a sovereign guarantee to indemnify them or in which the government engaged in an improper taking of property or rights. In all cases the government has consistently declared that it would honor the arbitrators' judgments.

More widely, Mongolian businesses partnered with foreign investors will accept international arbitration, as do government agencies that contract business with foreign investors, rather than avail themselves of the Arbitration Bureau operated by the Mongolian National Chamber of Commerce and Industry.

Regarding the Mongolian Arbitration Bureau, foreign investors tell us they decline local arbitration, and seek redress abroad because they perceive domestic arbitrators as too politicized, too unfamiliar with commercial practices, and too self-interested to render fair decisions.

Although arbitration is widely accepted among business people and elements of the government, support for binding international arbitration has not penetrated local Mongolian agencies responsible for executing judgments. Investors routinely report that the most common problem preventing resolution of debt-driven disputes is that the State Court Enforcement Office (SCO) often fails to execute collection orders and court-ordered foreclosures.

The *U.S.-Mongolia Bilateral Investment Treaty (BIT)* entitles both U.S. and Mongolian investors to seek third country arbitration for business disputes.

A.5 PERFORMANCE REQUIREMENTS AND INCENTIVES

Mongolia has traditionally imposed few performance requirements on, and has offered few incentives to, investors. For the most part, the few requirements imposed have been neither onerous nor limited foreign participation in any sector of the economy. However, investors suggest that the recently passed 2012 *Strategic Entities Foreign Investment Law of Mongolia* (SEFIL) imposes some strict performance requirements on foreign investors in three strategic sectors.

Under the current Tax Law of Mongolia, the government of Mongolia (GOM) attempts to limit both exemptions and incentives and to make sure that tax preferences offered are available to both foreign and domestic investors. The GOM occasionally grants tax exemptions for imports of essential fuel and staple food products; or for imports in certain sectors targeted for growth, such as the agriculture sector. Such exemptions can apply to both import duties and Mongolia's value-added tax (VAT). In addition, the GOM will occasionally extend a 10% tax credit on a case by case basis to investments in such key sectors as mining, agriculture, and infrastructure.

Revocation of the VAT Exemption

Investors view Mongolia's treatment of exemptions as a mixed bag. On the down side, Mongolia does not exempt equipment intended for mining from the 10% value-added tax (VAT) unless the equipment will produce highly-processed mining products in Mongolia. For example, if the Oyu Tolgoi (OT) copper-gold project were to smelt copper, imported equipment supporting production of metallic copper might qualify for an exemption from the VAT. However, to promote value-added production in Mongolia, the GOM defines the production of copper concentrate as non-value-added output; and so, equipment imported to develop and operate this sort of operation would not qualify for the 10% VAT exemption. Most jurisdictions, recognizing that most mines have long development lead times before production begins, either waive or do not tax such imports at all. Parliament has chosen to impose VAT, making Mongolian mining cost 10% more than it would otherwise be, thus impairing sector competitiveness and dramatically varying from global practice.

New Royalty Regime

In 2011, the GOM formally rescinded the Windfall Profits Tax (WPT) as a condition for the GOM entering the OT agreement. OT's private investors

successfully argued that they would not be able to operate OT commercially if burdened with the WPT. However, the end of the WPT represents a significant loss of revenue to the GOM; and so, Parliament passed a revised royalty scheme. The new regime imposes sliding rates on a variety of mineral and metal products, which depend on the market price of the commodity on certain world exchanges and the amount of processing the mineral or metal receives in Mongolia. The more value added done in Mongolia, the lower the increase in royalty.

More Generous Loss Carry-forward provisions

Parliament also extended the loss carry-forward period from two (2) to eight (8) years as part of the package of tax reforms made to conclude the OT Agreement. Most investors find eight years sufficient for many Mongolian investments that require long, expensive development horizons before producing any sort of profit.

Increasing Restrictions on Foreign Investment

Restrictive Aspects of the 2012 Strategic Entities Foreign Investment Law (SEFIL)

As passed, some of SEFIL's provisions seem potentially restrictive on foreign investment. The new law specifically limits the amount of FDI in the resource extraction, media, and financial sectors respectively; and subjects these investments to government and parliamentary scrutiny, which may lead to forced divesture of a given investment. (See Chapter A.1 for a discussion of the SEFIL.)

Other Restrictions on Investors

Restrictions on hiring expatriate labor aside, foreign investors currently need not use local goods, services, or equity, or engage in substitution of imports. The government applies the same geographical restrictions to both foreign and domestic investors. Existing restrictions involve border security, environmental concerns, or local use rights. There are no onerous or discriminatory visas, residence, or work permits requirements imposed on American investors. Neither foreign nor domestic businesses need purchase from local sources or export a certain percentage of output; or require foreign exchange to cover their exports. Although there remains no formal law requiring the use of local goods and services, the GOM encourages value-added production and local sourcing of human and material inputs in Mongolia, especially for firms engaged in natural resource extraction. All Mongolian senior officials and politicians make in-country processing a consistent feature of their public and private policy statements

regarding the development of mining. For example, the new royalty scheme offers reduced royalty rates for companies that do more value-added processing in Mongolia. Government talks on coal production constantly feature discussions of power generation and coals-to- liquid processing in Mongolia. Government plans also call for increased investment in businesses and activities that keep the "value" of a resource in Mongolia. Consequently, companies should continue to expect the GOM to press aggressively for value-added production in Mongolia.

Generally, foreign investors set their own export and production targets without concern for government imposed targets or requirements. There is no requirement to transfer technology. As a matter of law, the government generally imposes no offset requirements for major procurements. Certain tenders and projects on strategic mineral deposits may require agreeing to specific levels of local employment, procurement, or to fund certain facilities as a condition of the tender or project, but as matter of course such conditions are not the normal approach of the government in its tendering and procurement policies.

Investors, not the Mongolian government, make arrangements regarding technology, intellectual property, and similar resources and may generally finance as they see fit. Foreign investors currently need sell no shares to Mongolian nationals. Equity stakes are generally at the complete discretion of investors, Mongolian or foreign—with key exceptions for investments affected by SEFIL and *strategic* mining assets, as discussed below.

Although Mongolia imposes no statutory or regulatory requirement, the GOM, as a matter of foreign policy, sometimes negotiates restrictions on what sort of financing foreign investors may obtain and with whom those investors might partner or to whom they might sell shares or equity stakes. These restrictive covenants will most likely be imposed in certain sectors where the investment is determined to have national impact or national security concerns, especially in the key mining sector.

Regarding employment, investors can locate and hire workers without using hiring agencies—as long as hiring practices are consistent with Mongolian labor law. However, Mongolian law requires companies to employ Mongolian workers in certain labor categories whenever a Mongolian can perform the task as well as a foreigner. This law generally applies to unskilled labor categories and not areas where a high degree of technical expertise not existing in Mongolia is required. The law does provide an escape hatch for all employers. Should an employer seek to hire a non-Mongolian laborer and cannot obtain a waiver from the Ministry of

Labor for that employee, the employer can pay a monthly waiver fee per employee per month. Depending on the importance of a project, the Ministry of Labor may grant an employer a 50% exemption of the waiver fees as an incentive.

Increasing Performance Requirements

Requirements Imposed by the Strategic Entities Foreign Investment Law (SEFIL)

Investors have expressed concern that SEFIL apparently requires foreign investment in the targeted sectors to submit to GOM involvement in management, procurement, hiring, and other related processes and decisions. In particular, SEFIL appears to require foreign-invested entities to use Mongolian suppliers and labor. Whether this constitutes a formal requirement to use Mongolian labor and suppliers under all circumstances or whenever possible remains unclear. As many skill sets, goods, and services are not available in Mongolia, investors tell us a strict local-sourcing requirement may cripple investment in Mongolia. Given these lingering, negative perceptions, investors have stated they require clarification of SEFIL's potential performance requirements from the government of Mongolia. For a fuller discussion of SEFIL see Chapter A.1.

Requirements in the Petroleum and Mining Sectors

Performance requirements are sparingly imposed on investors in Mongolia with the exception of petroleum and mining exploration firms. The Petroleum Authority of Mongolia (PAM), now a department of the newly created Ministry of Mining, issues petroleum exploration blocks to firms, which then agree to conduct exploration activities. The size and scope of these activities are agreed upon with PAM and are binding. If the firm fails to fulfill exploration commitments, it must pay a penalty to PAM based on the amount of hectares in the exploration block, or return the block to PAM. These procedures apply to all investors in the petroleum exploration sector.

Under the 2006 Minerals Law, receiving and keeping exploration licenses depends on conducting actual exploration work. Each year exploration firms must submit a work plan and report on the execution of the previous year's performance commitments, all of which are subject to annual verification by the Minerals Authority of Mongolia (MRAM). Failure to comply with work requirements may result in fines and suspension or even revocation of exploration rights. Exploration work commitments expressed in terms of US dollar expenses per hectare per year:

- 2nd and 3rd years miners must spend no less than US $.50 per hectare.
- 4th to 6th years miners must spend no less than US $1.00 per hectare.
- 7th to 9th years miners must spend no less than US $1.50 per hectare.

Moreover, in the case of *strategic deposits*, the GOM can acquire a sliding percentage of the mine's operating entity ranging from 34% to 50%. It also requires the holder of the *strategic* asset to sell no less than 10 percent of the enterprise to Mongolian citizens on the existing Mongolian Stock Exchange (MSE). Mining companies that operate or seek to develop non-strategic deposits have reported that GOM has also vigorously pressed them to list on the MSE, although neither law nor regulation requires listing. While foreign and domestic investors and mining companies have supported the GOM's call to list in principle, they argue that they require clear, transparent guidance from the GOM on how to list on the MSE. (See Chapters A.9 and A.10 for details on the Mongolian Stock Exchange.)

In 2009, Parliament passed the *Nuclear Energy Law* (NEL). NEL imposed significant controls on mining and processing uranium in Mongolia and created a new regulatory agency, the Nuclear Energy Agency (NEA), and a state-owned holding company, MonAtom, to hold assets that the government acquires from current rights holders. The law imposed several conditions:

- Requires all exploration and mining licenses for uranium and some rare earths to be registered with the NEA, for a fee.

- Allows the Mongolian state the right to take—without compensation—at least 51% of the company that will develop the mine as a condition of being allowed to develop any uranium property.

- Creates a uranium-specific licensing, regulatory regime independent of the existing regulatory and legal framework existing for mineral and metal resources. Prior to the Nuclear Energy Law, exploration licenses gave their respective holders the rights to discover and develop any and all mineral and metal resources discovered within that license area (this excludes petroleum resources, which are governed separately). According to GOM officials, this law means that the state can issue a distinct license for uranium exploration on a property otherwise dedicated to other mineral and metals exploration

Requirements Imposed on Foreign Investors Only

The Foreign Investment Law of Mongolia (FILM) requires all foreign investors to register with the Foreign Investment Regulation and Registration Office (FIRRD) and to show a minimum of US$100,000 in assets (cash, working stock, property, etc.) registered in Mongolia as preconditions for registration. Foreign investors must also pay an initial processing fee of some 12,000 Tugriks (US$8.50) and a yearly extension fee of 6,000 Tugriks (US$4.25). (For more on FIRRD, see Chapter A.1)

In addition to these fees, foreign investors must annually report on their activities for the coming year to FIRRD. Businesses need not fulfill plans set out in these reports, but failure to report may result in non-issuance of licenses and registrations and suspension of activities. This requirement differs from that imposed on domestic investors and businesses. Domestic investors have no yearly reporting requirement. Mongolians pay lower registration fees, which vary too much to say with any precision what the fees actually are.

FIRRD explains that the higher registration costs for foreign investors arise from the need to compensate for the services it provides to them, including assistance with registrations, liaison services, trouble-shooting, etc. The different reporting requirements provide the government with a clearer picture of foreign investment in Mongolia. Foreign investors are generally aware of FIRRD's arguments and largely accept them, but they question the need for annual registrations. Investors recommend that FIRRD simply charge an annual fee rather than require businesses to submit a new application each year.

Regarding reports, foreign businesses are concerned about the security of their proprietary information. Foreign investors routinely claim that agents of FIRRD use or sell information on business plans and financial data. We have yet to verify these claims, but FIRRD acknowledges that data security largely depends on the integrity of its staff, as it has few internal controls over access to investor data.

In 2012, investors complained about FIRRD's attempts to impose arbitrary requirements on foreign-invested business not otherwise specified in law. For example, FIRRD refused to issue required documents unless investors agreed to a set of FIRRD-imposed company charters, even though neither the Foreign Investment Law nor the Company Law of Mongolia requires investors to use a particular format.

Tariffs

Mongolia has one of Asia's least restrictive tariff regimes. Its export and import policies do not harm or inhibit foreign investment. Low by world standards, tariffs of 5% on most products are applied across the board to all firms, albeit with some concerns about consistency of application and valuation. However, some non-tariff barriers, such as phyto-sanitary regulations, exist that limit both foreign and domestic competition in the fields of pharmaceutical imports and food imports and exports. The testing requirements for imported drugs, food products, chemicals, construction materials, etc., are extremely nontransparent, inconsistent, and onerous. When companies attempt to clarify what the rules for importing such products into the country are, they routinely receive contradictory information from multiple agencies.

WTO TRIMS Requirements

Mongolia employs no measures inconsistent with World Trade Organization Trade Related Investment Measures (TRIMS) requirements, nor has anyone alleged that any such violation has occurred.

A.6 RIGHT TO PRIVATE OWNERSHIP AND ESTABLISHMENT

Generally, unless otherwise forbidden by law, foreign and domestic businesses have been able to establish and engage in any form of business activity. All businesses can start up, buy, sell, merge; in short, do whatever they wish with their assets and firms, with exceptions in the minerals and hydrocarbon, banking and finance, media and telecommunications, and real estate sectors. However, investors suggest that that the passage of the *Strategic Entities Foreign Investment Law* (SEFIL) signals Mongolia's retreat from what was once one of Asia's most liberal ownership and establishment regimes.

Strategic Entities Foreign Investment Law of 2012 (SEFIL)

Investors have indicated that SEFIL's provisions may limit the rights of private ownership and establishment that had typified Mongolia's investment regime. The new law specifically limits the amount of FDI in the resource extraction, media, and financial sectors respectively; and apparently limits how investors can buy, sell, merge, or develop assets in the affected sectors. In this respect, SEFIL appears a sea change in a heretofore fairly liberal investment regime. Given these lingering, negative perceptions, investors have stated that a definitive and official statement regarding private ownership of assets and enterprises in the sectors covered by SEFIL from the appropriate government of Mongolia entity would quell persistent doubts. For a fuller discussion of the SEFIL see Chapter A.1.

Competition from the State-Owned Sector

Mongolia passed and implemented a competition law applying to foreign, domestic, and state-owned entities active in Mongolia. As a practical matter, competition between state-owned and private businesses had been declining for the simple reason that many parastatals had been privatized. Exceptions include the state-owned power and telecom industries, a state-owned airline, the state-owned rail system (half-owned by Russia), several coal mines, and a large copper mining and concentration facility (also half-owned by Russia).

Currently, firms from Mongolia, China, Japan, Europe, Canada, and the U.S. are actively seeking opportunities for renewable and traditional power generation in Mongolia. However, few want to invest in the power generation field until the regulatory and statutory framework for private power generation firms up and tariffs are set at commercial rates.

Regarding its railway sector, Mongolia has no plans to privatize its existing railroad jointly held with the government of Russia, but current law does allow private firms to build, operate, and transfer new railroads to the state. Under this law several private mining companies have proposed rail links, and obtained licenses to construct these new lines from their respective coal mines to the Chinese border or to the currently operating spur of the Trans-Siberian Railroad.

These public-private rail projects are part of the GOM's current national rail expansion plan. The plan requires that railroads linking key coal deposits in the South Gobi desert region must first link those deposits to Russia's Pacific ports before linking with Chinese markets. Further, these projects may use international gauge used in China only after the links with Russia are completed, using Russian gauge. The GOM argues that this approach will keep Mongolia from being dependent on one market for its mining products, namely China. As construction on the Russian lines has stalled, there has been no progress on the China lines.

Some observers question the rationale and sequencing of government plans. In their collective opinion, the Chinese market, the largest and most lucrative, should be developed first, followed by (or parallel with) diversification strategies. They see few commercial and economic benefits from GOM plans.

Government Re-enters the Mining Business

Although the trend had been for the GOM to extract itself from ownership of firms and other commercial assets, the 2006 Minerals Law of Mongolia and the newer 2009 Nuclear Energy Law keep the state in the mining business. (See Chapter A.1 for fuller discussions of both laws.) Under both laws, the GOM grants itself the right to acquire equity stakes ranging from 34% up to 100% of certain deposits deemed strategic for the nation. Once acquired, these assets are vested with two state-owned holding companies respectively: *Erdenes MGL*, for non-uranium mining assets; and MonAtom for uranium resources. State mandates require these companies to use proceeds from their activities to benefit the Mongolian people.

The role of the state as an equity owner, in terms of management of revenues and operation of mines, remains unclear at this point. Many question the GOM's capacity to deal with conflicts of interest arising from its position as both regulator and owner-operator. Specifically, investors worry that the GOM's desire to maximize local procurement, employment, and revenues may comprise the long term commercial viability of any mining project.

Investors also question the GOM's capacity to execute its fiduciary responsibilities as both owner and operator of mines. In the case of its Erdenes MGL Tavan Tolgoi mining operation (EMTT), the GOM received a prepayment of US $250 million prepayment for coal from a Chinese state-owned entity. Rather than allowing EMTT to retain these funds to cover substantial start up costs, the GOM claimed the balance of the payment, US$200 million, for its Human Development Fund, which has redistributed primarily mining revenues to the Mongolian public in the form of monthly cash payments. Throughout 2012 (and it appears into 2013), this GOM action has left EMTT chronically insolvent, thereby crippling operational activities.

Consequently, investors worry that the GOM will divert future revenues gained from mining activities—for example capital raised through initial public offerings from strategic mines—for unrelated expenses. Going forward, the GOM will likely have to provide binding assurances that it can responsibly steward company interests rather than seeing state-owned companies as nothing more than transfer mechanisms for payments to the Mongolian public.

Observers are also concerned that the GOM may waive legal and regulatory requirements for state-owned mining companies that it imposes on all others. These claims seem borne out by the GOM's treatment of state-owned EMTT. Generally, private mining firms take at least two years to submit and receive approval for relevant environmental and operating permits for coal mines in Mongolia. However, there is no indication that GOM required EMTT to follow the statutory or regulatory requirements imposed on other operations. A review of timelines suggests that the normally lengthy approval processes cannot have been followed. This preferential treatment creates the appearance that the GOM has one standard for its SOEs and another for foreign-invested and private domestic invested companies; and also the appearance that SOEs receive substantial cost advantages via a more lenient interpretation of the legal requirements.

A.7 PROTECTION OF PROPERTY RIGHTS

Both Mongolia's constitution and statute recognize the right to own private property, movable and immovable. Regardless of nationality (except for land, which only Mongolian citizens can own), owners can generally do as they wish with their property. One can collateralize real estate and movable property. Mongolian law does allow creditors to recover debts by seizing and disposing of property offered as collateral. The only exceptions to this liberal regime are the current mining laws and the newly passed *Strategic Entities Foreign Investment Law* (SEFIL). Both foreign and domestic investors suggest that these laws restrict how they may own and use property and property rights in the mining, banking and finance, media and telecommunications sectors.

Strategic Entities Foreign Investment Law (SEFIL)

Investors tell us they believe that SEFIL limits their property rights in violation of existing law and the Constitution of Mongolia. SEFIL appears to allow the government to intervene in daily management decisions, not to mention crucial decisions on investment, capital spending, and other key practices. Investors believe that these changes diminish property rights protections. Given these lingering, negative perceptions, investors have called for a definitive, official statement regarding protection of property rights in the sectors covered by SEFIL from the appropriate government of Mongolia entity. For a fuller discussion of the SEFIL see Chapter A.1.

Mongolia's Current Regime to Protect Creditors

Mongolia law does protect creditors but reform is needed. Although courts recognize property rights in concept, they have a checkered record of protecting them in practice. Part of the problem is ignorance of, and inexperience with, best international practices regarding land, leases, buildings, and mortgages. As noted in *Chapter A.4 Dispute Settlement*, some judges, whether out of ignorance or apparent partiality for Mongolian disputants over foreigners, have failed to follow such practices. Newly trained judges make good faith efforts to uphold property rights but need more experience adjudicating such cases.

The legal system also allows only judicial foreclosure but bans non-judicial foreclosure for any contested foreclosure action. Because all contested foreclosure actions require court review and are subject to appeals up to the Supreme Court of Mongolia, final resolution and debt collection often takes up to 36 months.

In addition, rudimentary systems for determining title and liens and for collecting on debts make lending on local collateral risky. Banks and other creditors frequently complain that onerous foreclosure rules are barely workable and unfair to lenders. Although a system exists to register immovable property—structures and real estate—for the purpose of confirming ownership, it does not record existing liens; nor does the system record ownership and liens on movable property. Consequently, creditors risk lending on collateral that debtors may not actually own or which may have already been offered as security for other debts.

Since 2008 the Millennium Challenge Corporation (MCC) has worked with the GOM to create a modern and efficient property registration. The project is expected to increase access to loans and property investment for households. In addition, the project aims to streamline business registration process and reduce the time and cost of property registration. The urban component of the MCC-funded Property Rights project has improved Mongolia's property registration system and helped households obtain title to land in urban "ger" districts. The project is working in eight provinces and in the capital city of Ulaanbaatar. Progress to date includes the renovation of eleven property registry buildings, training of citizens and officials, the digitization of some 7.5 million pages of land registry records, and the strengthening of cadastral mapping capacity. For program details go tohttp://www.mca.mn/?q=eng/Project/PropertyRights.

Debt Collection Procedures

Even with the delays, lenders report that getting a court ruling is easier than executing the court's decision. The problem is not the law but the enforcement. A judge orders the *State Collection Office* (SCO) to move on the assets of the debtor. The SCO orders district bailiffs to seize and turn those assets over to the state, which then distributes them to creditors. However, foreign and domestic investors claim that the state collection office and the district bailiffs frequently fail in their responsibilities to both courts and creditors.

In some cases, bailiffs refuse to enforce court orders. Bailiffs are often local agents who fear community retribution if they make collection. In some cases, bailiffs will not collect unless the creditor provides bodyguards during seizure of assets. Creditors also have reason to believe that the state collection office accepts payments from debtors to delay seizure of assets.

Protection of Intellectual Property Rights

Mongolia supports intellectual property rights (IPR) in general and has protected American rights in particular. A member of the World Intellectual Property Organization (WIPO), Mongolia has signed and ratified most treaties and conventions, including the World Trade Organization Agreement on Trade Related Aspects of Intellectual Property Rights (WTO TRIPS). WIPO Internet treaties have been signed but remain un-ratified by Mongolia's Parliament. Despite this, the Mongolian government and its intellectual property rights enforcer, the *Intellectual Property Office of Mongolia* (IPOM), make a good faith effort to honor these agreements.

Under TRIPS and Mongolian law, the Mongolian Customs Authority (MCA) and the Economic Crimes Unit of the National Police (ECU) also have an obligation to protect IPR. MCA can seize shipments at the border. The ECU has the exclusive power to conduct criminal investigations and bring criminal charges against IPR pirates. The IPOM has the administrative authority to investigate and seize fakes without court orders. Of these three, the IPOM makes the most consistent efforts to fulfill Mongolia's treaty commitments.

Problems stem from ignorance of the importance of intellectual property to Mongolia and of the obligations imposed by TRIPS on member states. Customs still hesitates to seize shipments, saying their statutory mandate does not allow seizure of such goods, but Mongolian statutory and constitutional laws clearly recognize that international treaty obligations in this area take precedence over local statutes and regulations. A clear legal basis exists for Customs to act, which has been recognized by elements of the Mongolian Judiciary, the Parliament, and the IPOM. Customs officers may occasionally seize fake products, but it seems that Mongolian customs law will have to be brought into formal compliance with TRIPS before Customs will fulfill its obligations. The ECU has also hesitates to investigate and prosecute IPR cases, deferring to the IPOM. Anecdotal evidence suggests that ECU officials fear political repercussions from going after IPR pirates, many of whom wield political influence.

The IPOM generally has an excellent record of protecting American trademarks, copyrights, and patents; however, tight resources limit the IPOM's ability to act. In most cases, when the U.S. Embassy in Ulaanbaatar conveys a complaint from a rights holder to the IPOM, it quickly investigates the complaint. If it judges that an abuse occurred, it will (and has in every case, so far) seize the pirated products or remove fakes, under administrative powers granted in Mongolian law.

We note two areas where enforcement lags. Legitimate software products remain rare in Mongolia. Low per capita incomes give rise to a thriving local market for cheap, pirated software. The IPOM estimates pirated software constitutes at least 95% of the market. The Office enforces the law where it can but the scale of the problem dwarfs its capacity to deal with it. The IPOM will act if we bring cases to its attention.

Pirated optical media are also readily available and subject to spotty enforcement. Mongolians produce insignificant quantities of fake CD's, videos, or DVD's, but import most such products from China, Russia, and elsewhere. Products are sold through numerous local outlets and regularly broadcast on private and public local TV stations. The IPOM hesitates to move on TV broadcasters, most of which are connected to major government or political figures. Rather, the IPOM raids local ("street") DVD and CD outlets run by poor urban retailers who lack the political and economic clout of the TV broadcasters. Again, when an American raises a specific complaint, IPOM acts on the complaint, but rarely initiates action.

Restrictive Aspects of Current Mining Laws

Minerals Law of 2006

Investors suggest that the Minerals Law seems to prevent transfer of exploration or mining rights to any third party lacking professional mining qualifications as determined by the Mineral Resources Authority of Mongolia (MRAM).

The concept of ***mining expertise*** can either qualify or disqualify any entity from acquiring, transferring, or securitizing exploration and mining rights. The law potentially limits the ability of rights holders to seek financing, because it forbids transfer of mining licenses and exploration rights to *non-qualified individuals.* Consequently, a miner might not be able to offer his licenses as secured collateral to banks or to other lenders lacking the professional qualifications to receive these rights if the miner defaulted on his debt obligations.

In addition, no foreign entity, in its own right, can hold any sort of mining or petroleum license; only entities registered in Mongolia under the terms of relevant company and investment laws may hold exploration and mining licenses. Should a foreign entity acquire a license as collateral or for the purpose of actual exploration or mining, and fail to create the appropriate Mongolian corporate entity to hold a given license, that failure may serve as grounds for invalidating the license.

Foreign financial institutions should be particularly vigilant as the GOM has proven willing and able to revoke mining and exploration licenses on the grounds that these licenses have not been properly pledged to legitimate Mongolian financial institutions. We advise investors with specific questions to seek professional advice on the status of the pledging process.

2009 Nuclear Energy Law (NEL)

Investors suggest that NEL curtails property rights protections for uranium:

- Requires all licensees to register uranium and certain rare earth licenses with the Nuclear Energy Agency (NEA).

- Requires investors to accept that the Mongolian state has an absolute right to take -- without compensation -- at least 51% of the company (as opposed to the deposit) that will develop the mine as a condition of being allowed to develop any uranium property.

- Creates a uranium-specific licensing and regulatory regime independent of the existing regulatory and legal framework for mineral and metal resources. The state can issue a distinct license for uranium exploration on a property otherwise dedicated to other mineral and metals exploration

Investors state that the NEL sanctions expropriation without compensation, a concept heretofore alien to Mongolian law; and offer the case of Canadian uranium exploration company in support of this claim. In 2010, the GOM revoked this Canadian firm's rights to develop a uranium deposit without compensation; and vested those rights in a Russian-Mongolian state-owned company. The Canadian firm has since move to settle its claims through international arbitration.

Although the 2006 Minerals Law of Mongolia and other pieces of legislation support compensation for rights holders for any taking, the NEL allows the GOM to seize holdings with no obligation to compensate rights holders. Complicating the issue, the law conflates deposits with the mining companies developing those deposits, letting the GOM claim an uncompensated share of any entity that might mine the deposit. In effect, the GOM demands a free-carried, non-compensated interest of no less than 51% of any uranium mining firm in Mongolia.

Uranium rights holders contested the constitutionality of these provisions before Mongolia's Constitutional Court, and lost the case. The Court upheld the law,

asserting that the all minerals in the ground are the property of the Mongolian state even if extracted from the ground. Legal experts with whom we consulted explained that the Court seems to make the extraordinary and unprecedented claim that Mongolia's ownership extends to products created with the ore; hence the state has a "legitimate" claim on both the ore body and any company mining the resource. This theory appears to undermine the property rights of uranium investors and chips away at property rights protections granted both under the constitution and Mongolia's Minerals, Company, and Foreign Investment Laws.

A.8 LEGISLATIVE AND REGULATORY TRANSPARENCY

Generally, lack of laws and regulations is not Mongolia's problem; rather, legislators and government officials lack knowledge on what foreign and domestic investors need from the state to invest securely. Compounding this ignorance, these same officials frequently decline to consult meaningfully with those affected by legislative and regulatory acts. Corruption aside, the fact that laws and regulations change with little consultation creates chaos for all parties.

Drafting Process for Legislation and Regulations

The Current Legislative Process

Mongolian laws are crafted in two ways. Typically, Parliament or the Cabinet of Ministers requests legislative action. These institutions send such requests to Prime Minister, who usually in consultation with the Cabinet of Ministers, orders the relevant ministry to draft legislation. The respective minister then relays the order to his ministerial council, which in turn sends the request to the proper internal division or agency, which in turn forms a working group. The working group drafts a law, submits it for ministerial review, makes recommended changes; and then the full Cabinet of Ministers reviews the draft, normally sending the document to relevant ministries for comment.

Prior to a final vote by the Cabinet of Ministers, the National Security Council of Mongolia (NSCM)—consisting of the President of Mongolia, the Prime Minister, and Speaker of Parliament—can review each piece of legislation for issues related to national security. Although the government has never clarified the legal and constitutional authority of the NSCM to veto or recommend changes to draft legislation, the Cabinet to our knowledge has never overruled NSCM recommendations.

Once through NSCM and Cabinet reviews, the bill goes to Parliament. Parliament may follow or reject NSCM recommendations as members see fit. In Parliament, the bill is vetted by the relevant Standing Committee, sent back for changes or sent on to the full Parliament for a vote. The President has line-item veto power, but Parliament can override presidential vetoes with a two-thirds vote.

The second approach to legislating was once rare but now common: Members of Parliament and the President of Mongolia draft and submit bills for submission to Parliament. However, such bills must be submitted to the government for review

before being delivered to Parliament. If the Cabinet of Ministers does not respond within 30 days, MPs and the President of Mongolia can submit the legislation directly to Parliament without further review. The Speaker of Parliament receives the bill and directs it to the relevant Standing Committee (SC) for review. The SC may delay consideration; or, following review, pass the bill on to the Parliament's plenary body, unaltered or revised, for a general vote. Standing Committees cannot reject bills outright, as that power lies only with the plenary body of Parliament.

The Regulatory Drafting Process

For regulations, the process is truncated. The relevant minister tasks the working group that wrote the original law to draft regulations. This group submits their work to the minister who approves or recommends changes. In most cases, regulations require no Cabinet approval and become official when the relevant incumbent minister approves them. When legislation crosses inter-ministerial boundaries, the Cabinet authorizes the most relevant ministry to supervise an inter-ministerial approval process for regulations.

Role of the Ministry of Justice and Home Affairs

The Ministry of Justice and Home Affairs (MOJHA) plays a key role in the drafting of both laws and regulations. MOJHA vets all statutes and regulations before they are passed for final approval. In the case of legislation, MOJHA reconciles the language and provisions of the law with both existing legislation and the Constitution, after which the law passes to the Cabinet and then Parliament. MOJHA also vets regulations to ensure consistency with current laws and the Constitution. In effect, MOJHA can either modify or even veto legal or regulatory provisions inconsistent with existing statutes and the Constitution.

System Lacks Transparency

On paper the Mongolian legislative and regulatory process appears transparent, but investors and other observers report a gap between the theory of transparency inherent in Mongolian law and the actual practices of officials and legislators.

In 2011, Parliament passed the *Law on Information Transparency and the Right to Information (LIT).* This legislation sets out which government, legislative, and non-governmental organizations must provide information to the public—both in terms of what information should be regularly disseminated and how these respective organizations should respond to requests for information by citizens and

legal entities residing in Mongolia. LIT requires state policies, some legislative acts, and administrative decisions to be posted on the appropriate government websites in understandable language for no less than 30 days for comment and review. Comments may be incorporated in proposals if deemed appropriate. In addition, government entities must post public hiring processes, concessions, procurement, and budget and finance information.

LIT specifically exempts the armed forces, the border protection and internal troops, and intelligence organizations from its provisions. Ongoing citizen complaints and petitions are not subject to LIT's provisions; nor does the law apply to intellectual property information, corporate or business information, or personal information.

In addition to LIT, the *Law on Making Laws* (LML) requires (or requests in the case of Parliament) that those who draft and submit laws to Parliament—termed *lawmakers* in the LML—must subject their legislative acts to comment and review. Specifically, the President and the ministries must submit their legislative drafts for review and comment. Parliament, however, may solicit comment and review but is not required to do so. However, the LML does not specify who is to be consulted, how they are to be consulted; when or where; and what is to be done with comments and critiques of a given piece of legislation.

In response to LIT, the Cabinet of Ministers requires ministries to post proposed regulatory changes on ministerial websites for comment and review at least thirty (30) days before approval. As with LML, the Cabinet decree does not specify a standard process for collecting and acting upon public comment and review.

Such nods to transparency notwithstanding, investors find that the current process allows no statutory, systematic, and transparent review of legislation and regulations by stakeholders and the public. Most ministerial initiatives still seem to go unpublished until the draft passes out of a given ministry to the full Cabinet. Typically, the full Cabinet discusses and passes bills on to Parliament, without public input or consultation. Parliament itself neither issues a formal calendar nor routinely announces or opens its standing committees or full chamber hearings to the public. While Parliament at the beginning of each session announces a list of bills to be considered during the session, this list is very general and often amended. New legislation is commonly introduced, discussed, and passed without public announcement or consideration. Members of the public requesting information on the voting record of their representative are often told that such information is not publicly available.

Laws, Regulations, and Policies that Impede FDI

While the GOM has supported FDI and domestic investment, individual agencies and elements of the judiciary reportedly use their respective powers to hinder investments into such sectors as meat production, telecommunications, aviation, or pharmaceuticals. Both domestic and foreign investors report abuses of inspections, permits, and licenses by Mongolian regulatory agencies. Aside from the growing perception that the judiciary is prejudiced against foreign investors, we generally note no systematic pattern of abuse consistently initiated by either government or private Mongolian entities aimed at foreign investment in general or against U.S. investors in particular. More typically, we find opportunistic attempts by individuals to misuse contacts to harass U.S. and other foreign investors with whom the Mongolian entity is in dispute. (See Chapter A. 4 for a fuller discussion of the Mongolian judicial response to foreign investor disputes.)

Alternatively, other reports suggest that Mongolians use connections with well-placed regulators at all levels to extract extralegal payments from both foreign and domestic businesses or otherwise hinder their work. In the latter case, the general approach is to demand a payment in lieu of not enforcing work, environmental, tax, health and safety rules; otherwise imposing the full weight of a contradictory mix of socialist era and the current, reformed rules on the firm. Most foreign businesses refuse to pay bribes and in turn accept the punitive inspections, concede to some of the violations found, and contest the rest in the courts. In our experience companies that stand against predatory abuse of statutory and regulatory power will face impediments at the start; but these usually ease over time as state agents look for easier targets.

Abuse of the Exit Visa System

Valid exit visas are required and normally issued *pro forma* at the port of departure (e.g., the international airport), but may be denied for a variety of reasons including civil disputes, pending criminal investigation, or for immigration violations. The law does not allow authorities to distinguish a criminal and civil case when detaining a person. If denied for a civil dispute, the exit visa may not be issued until either the dispute is resolved administratively or a court has rendered a decision. Neither current law nor regulations establish a clear process or timetable for resolution. In fact, the Mongolian government maintains the right to detain foreign citizens indefinitely without appeal until the situation has been resolved.

Research into the issue has revealed that abuse of the exit-visa system also affects investors from countries other than the U.S. All cases have a similar profile. A foreign investor has a commercial dispute with a Mongolian entity, often involving assets, management practices, or contract compliance. The Mongolian entities respond by filing either civil or criminal charges with local police or prosecutorial authority. It is important to note that at this point there need be no actual arrest warrant or any sort of official determination that charges are warranted: Mere complaint by an aggrieved party is sufficient grounds to deny exit.

An investor in this situation is effectively detained in Mongolia indefinitely. Some foreign investors have resolved the impasse by settling, thereby allowing departure from Mongolia. If unwilling to settle, the foreign investor will have to undergo the full investigatory process, which may lead to a court action. Investigations commonly take up to six months, and in one case an American citizen was denied an exit visa for over two years. In addition, even if a dispute seems settled, it can be filed in the same venue again—if the local police or prosecutors are willing—or in a different venue.

We note that Mongolian investors are not subject to similar impositions of their immigration codes when involved in commercial disputes. Mongolian citizens do not require exit visas to depart Mongolia and can only be denied exit with a pending arrest warrant.

A.9 EFFICIENT CAPITAL MARKETS AND PORTFOLIO INVESTMENT

Mongolia is developing the experience and expertise needed to sustain portfolio investments and active capital markets. It currently has a regulatory apparatus for these activities, and both the state and private entities beginning to engage in them. The government of Mongolia (GOM) imposes few restrictions on the flow of capital in any of its markets. However, multilateral institutions, particularly the International Monetary Fund (IMF), have typically found the regime too loose, especially in the crucial banking sector.

Although the government has clear rules about capital reserve requirements, loan practices, and banking management practices, the Bank of Mongolia (BOM), Mongolia's central bank, has historically resisted restraining credit flows and interfering with operations at Mongolia's commercial banks, even when the need to intervene has been apparent. However, in the ongoing aftermath to the 2008 global financial crisis on Mongolia's banking sector, the BOM has attempted to improve its capacity to deal with improperly managed banks that have affected the health of Mongolia's financial system. For example, the BOM closed and/or merged three (3) banks, leaving thirteen (13) operating commercial banks. Although further consolidation is under consideration, the reform process has stalled. In addition to these ongoing concerns, investors and lenders have told us they are wary of the impact of the recently passed *Strategic Entities Foreign Investment Law of 2012* (SEFIL), as it can potentially disrupt collaterization of Mongolian equities upon which Mongolian-based investments have been secured.

Potential Impact of the Strategic Entities Foreign Investment Law (SEFIL)

Lenders and investors argue that SEFIL may delay or prevent use of Mongolian equities to secure investments and financing; and, consequently, disrupt badly needed investments into the affected sectors. Prior to SEFIL, lenders and investors could secure their financing and investments by transfers of shares or other forms of equity. Under SEFIL, the GOM has the authority to intervene, or at the very least, delay the transaction to ensure GOM concerns under the law are satisfied. Although these review processes under SEFIL have not been formalized, investors believe that such reviews will take several months if not longer. Of equal concern is the possibility of having to seek approval for share transfers that occur abroad. This lack of clarity on financing and investment would invariably impact planning, hiring, and procurement decisions for relevant projects. An official, definitive GOM clarification of these issues would go a long way to quelling investor concerns. For a fuller discussion of SEFIL see Chapter A.1.

Capital and Currency Markets

Inflation Concerns

Typically Mongolia experiences high liquidity accompanied by scarce, barely affordable capital; however, 2011 saw liquidity in the private sector dramatically contract as the BOM, faced with inflationary impact of excessive government spending, moved to curtail excessive money supply and loan growth. These activities have driven up interest rates, which had been trending down, from around 12% for the most credit worthy to perhaps 90% per annum (or more) for the least. These efforts notwithstanding, inflation remains an ongoing concern. In 2008, inflation peaked at around 40% in 2008 before settling at 24%. Inflation eased in 2009 and 2010 as the global economic crisis drove down global commodity prices, which, when coupled with domestic monetary tightening, helped lower Mongolia's import-driven inflation rate. The official rate has hovered at around 12%. In the first half of 2012 budgets and inflation soared due to pre-election cash transfers, salary and pension increases, and public capital projects. However, severe revenue shortfalls have forced legislators to limit spending in the latter half of 2012, and these limits are expected to continue through 2013. Consequently, fears of inflation have somewhat abated.

Capital and Currency

Foreign investors can easily tap into domestic capital markets. However, they seldom do, because they can do better abroad or better locally by simply taking on an equity investor, Mongolian or otherwise.

The global economic crisis savaged Mongolia's currency, capital, and equity markets. While the currency, the Tugrik, proved resilient in holding its value against most international currencies, it fell some 40 % against the U.S. dollar from late 2008 into spring 2009, as the worst of the crisis hit. In 2010 through mid-2011, the Tugrik appreciated nearly 15% against the U.S. dollar; only to lose much of these gains in the latter half of 2011. 2012 has seen the Tugrik weaken, and most expect no strengthening until mid-2013 at the earliest, when China might increase purchases of Mongolian coal and OT is expected to begin exporting copper and gold. In the long term, we expect surging commodities sales and an influx of capital to fund future mining projects will yield a resilient Tugrik. However, a strengthening currency may prove a mixed blessing, complicating economic policy—in particular the impact a strong Tugrik may have on the growth of non-minerals export industries.

Equity Markets

In 2012, investors had hoped that the GOM would deliver on long-standing promises to adopt and implement reforms that would see the Mongolian Stock Exchange (MSE) become a more or less fully functioning stock exchange.

The MSE remains fully state-owned and state-managed, although it does allow private brokerage firms to conduct stock-trading operations. It is officially owned by the State Property Committee of Mongolia (SPC), a government agency now under the direct authority of the Ministry of Industry and Agriculture that oversees all state-owned enterprises, and had been managed day-to-day by a team selected from the ranks of the leading political party (although such employees do have to give up official party membership upon accepting a position at any state-owned enterprise).

Faced with growing demands from the public and development needs, the GOM recognizes that its ambitious program to raise capital for development projects—IPO's of state-owned businesses and underwriting of state-owned mining companies—hinges on creating a best-practices exchange. Hence, the GOM accepts in principal that the MSE requires reform. To support this effort, the GOM has replaced MSE management with a qualified international operator of stock exchanges, the London Stock Exchange (LSE).

However, observers tell us that both the GOM and Parliament are lagging on important and essential reforms of the Securities Law of Mongolia. The current law, insufficient and obsolete, was crafted to support the needs of individual Mongolian citizen investors rather than those of institutional or foreign investors. Consensus is that an up-to-date, best practice law would:

- Formally distinguish between beneficial owners and registered owners.
- Allow for custodians (financial institutions with legal responsibility for investors' securities).
- Institute new rules that would allow companies *listed* on the Mongolian Stock Exchange (MSE) to list their shares on other exchanges.

An amended securities law, consistent with practices, regulation, and statute used in other exchanges, will allow Mongolia to list and raise capital for important projects, such as Oyu Tolgoi and Tavan Tolgoi. Without such a law, Tavan Tolgoi and other public and private investments will face severe impediments to raising capital and valuing assets.

Mining company stock issues also impede expanding the role of the MSE. The 2006 Minerals Law of Mongolia requires holders of mining licenses for projects of strategic importance—Oyu Tolgoi, for example—to sell no less than 10% of the resulting entity's shares on the Mongolian Stock Exchange. Foreign and domestic mining companies with non-strategic assets have told us that the GOM also pressures them to list shares on the MSE. To our knowledge no company has followed the law or submitted to GOM pressure to list, because no one understands, nor has the GOM explained, what this provision means in practice or how to implement it.

The Banking Sector

Weakness in Mongolia's banking sector concerns all players, including the International Monetary Fund (IMF: http://www.imf.org). The system has been through massive changes since the socialist era, during which the banking system was divided into several different units. This early system failed through mismanagement and commercial naivety in the mid-90s, but over the last decade has become more sophisticated and somewhat better managed. The combined assets of Mongolia's current 13 commercial banks add up to around US$8.4 billion. (For more details on Mongolia's banking sector, please refer to the Bank of Mongolia: http://www.mongolbank.mn/eng/default.aspx.)

Mongolia has a few large, generally well-regarded banks owned by both Mongolian and foreign interests. These three banks—Trade and Development Bank, Golomt Bank, and Khan Bank—collectively hold approximately 90% ($7.7 billion) of all banking assets. They apparently follow international standards for prudent capital reserve requirements, have conservative lending policies, up-to-date banking technology, and seem generally well-managed. If a storm descends again on Mongolia's banking sector, these banks appear able to weather it.

However, concerns remain among observers about the effectiveness of Mongolia's legal and regulatory environment. As with many issues in Mongolia, the problem is not of lack of laws or procedures but the will and capacity of the regulator, the BOM, to supervise and execute mandated functions, particularly in regard to capital reserve requirements and non-performing loans.

From 1999 through late 2008, BOM consistently refused to close any commercial bank for insolvency or malpractice. In late 2008, Mongol Bank took Mongolia's fourth largest bank into receivership. Most deposits were guaranteed and their depositors paid out at a cost of around US$150 million -- not an inconsequential

sum in an economy then hovering at US$5 billion per annum GDP. In 2009, Mongolia's fifth largest bank went into receivership, and in 2010 two other mid-sized banks were merged.

The BOM and Mongolia's financial system endured that crisis. However, most observers note that the insolvent banks had shown signs of mismanagement, non-performing loans, and ill-liquidity for several years before the BOM moved to safeguard depositors and the financial sector. In response the BOM has attempted to introduce long-term reforms to enhance its ability to supervise the banking system; however, Parliament has yet to approve a package of reforms that has been before it for over two years. Little remedial action occurred in 2012, and none is expected in 2013.

A.10 Competition from State-Owned Enterprises (SOEs)

Mongolia has SOEs in, among other areas, transport, power, and mining. Investors have been allowed to conduct activities in these sectors, although in some cases a largely opaque regulatory framework limits both competition and investor penetration.

Corporate Governance of Mongolian SOEs

Until recently, the formally independent State Property Committee (SPC) controlled almost all Mongolian SOEs (excluding Oyu Tolgoi, Tavan Tolgoi, and uranium properties and the railroad). However, the 2012 government re-organization saw the SPC become a department of the Ministry of Industry and Agriculture. The implications of this change have yet to be worked out; and it remains unclear how the state will manage its portfolio of companies. In any case, when investing with Mongolian SOEs, investors are strongly advised to contact all relevant government entities to learn what their respective interests are and what actual administrative and management authority they actually have.

All SOEs are technically required to submit to the same international best practices on disclosure, accounting, and reporting as imposed on private companies. When the SOEs seek international investment and financing, they tend to follow these rules. However, because international best practices are not institutionalized in, and are sometimes at odds with, Mongolian law, many SOEs tend to follow existing Mongolian rules by default. At the same time, foreign-invested firms follow the international rules, causing inconsistencies in disclosure and accounting.

Aviation SOE

The state involves itself in the domestic and international aviation sectors; however, at this time, it operates no regular domestic schedule of flights. In addition to the state-owned Mongolian Airlines (MIAT), Mongolia has four private domestic service providers: EZNIS, Aero Mongolia, Blue Sky Aviation and Mongolian Airlines. Government regulation recommends maximum ticket prices that airlines may charge for all domestic routes, but the law does not strictly forbid airlines from charging fees higher than the state carrier, which does not currently operate domestically. Private carriers have succeeded in charging rates that might yield profits and support safe and efficient flying arrangements. MIAT flies a regular and occasionally profitable schedule of international flights, serving China, Japan, Korea, Russia, and Germany. Air China, Korean Air, and Aeroflot also

serve these routes. EZNIS and two other new private carriers also fly international routes to second tier Russian, Chinese, and Japanese cities, and seek additional routes throughout the Eurasian region. As far as the provision of airport services is concerned, there is no indication that MIAT is receiving preferential pricing or services.

Rail SOE

Mongolia has no plans to privatize the railroad it has jointly held with the government of Russia since 1949. As far as the construction of additional rail lines, the state has no real plans to turn over control of any rail network to private entities. Current law does allow private firms to build and operate but ultimately transfer new railroads to the state. Under this law several private mining companies have proposed rail links, and obtained licenses to construct these new lines from their respective coal mines to the Chinese border or to the currently operating spur of the Trans-Siberian Railroad; however, some of these licenses have been suspended or cancelled. Because landlocked Mongolia and its neighbors have yet to resolve transnational shipping issues, companies have not been able to use rights granted under these licenses.

Since 2010, Parliament has explicitly limited private rights to develop shipping and transport infrastructure required to move mining products to likely markets, such as China. Current policy requires that railroads linking key coal deposits in the southern Gobi desert region to link those deposits to Russia's Pacific ports before linking them with Chinese markets. Further, these projects may use the international gauge used in China only after the links with Russia are completed and using the Russian gauge. The GOM argues that these policies will keep Mongolia from dependency on one market for its coal products, namely China.

Mining SOEs

Mongolia has two categories of mining SOEs. The first group is legacy SOEs from the socialist era. The most important of these, Mongolrostvetmet and the Erdenet Mining Concern, are jointly owned by the Mongolian and Russian governments. The second category includes new SOEs mining copper, coal, uranium, and rare earths held by Erdenes MGL and MonAtom respectively. Erdenes MGL holds the government's 34 % of the Oyu Tolgoi project, but has no direct management responsibilities for this asset. Erdenes also holds the GOM's 100% share of the Tavan Tolgoi coal deposit. Part of this holding is structure through a subsidiary company Erdenes MGL Tavan Tolgoi (EMTT), which owns

and operates a new project on one of the Tavan Tolgoi licenses. In 2011, EMTT began extracting and shipping coal from the eastern half of the Tsankhi license area of the Tavan Tolgoi deposit, and inaugurated another mining operation on the western half of Tsankhi in 2012.

Although the trend had been for the GOM to extract itself from ownership of companies and other commercial assets, both the 2006 Minerals Law of Mongolia and the 2009 Nuclear Energy Law bring the state back into mining. Under both laws, the GOM grants itself the right to acquire equity stakes ranging from 34% to perhaps 100% of certain deposits deemed strategic for the nation. These companies are then mandated to use the proceeds from their respective activities for the benefit of the Mongolian people. (See Chapter A.1 for fuller discussions of both laws.)

Driving these trends is an explicit, public desire by the GOM to create national mining champions for coal, uranium, copper, and rare earths. The policy posits that a national champion owned and operated by Mongolians for Mongolians would be more inclined to conduct value-added operations in Mongolia than would foreign investors. Whether or not this policy effectively meets Mongolia's development needs, observers have told us that they perceive that the GOM may not favor foreign investment and is even taking steps to limit and control FDI in mining because it considers that such investment threatens GOM ambitions.

Both foreign and domestic investors also question if the GOM will waive legal and regulatory requirements for its state-owned mining companies that it imposes on all others. These claims seem borne out by the GOM's treatment of its Erdenes MGL Tavan Tolgoi mining operation. Generally, private mining firms take at least two years to submit and receive the required environmental and operating permits for coal mines in Mongolia. EMTT was up and running within a single year without any indication that the GOM forced EMTT to follow the statutory or regulatory requirements imposed on other operations; in fact, a review of the timeline leading to commencement of EMTT's operation suggests that the extensive statutory requirements of the current approval process that normally takes several years to complete cannot have been followed in this case. If true, this runs counter to GOM demand that companies comply with all relevant statutes.

Finally, investors also express concerns about the GOM's capacity to accept the fiduciary responsibilities that come from both owning and operating mines. For example, state-owned EMTT received a US $250 million prepayment for coal from a Chinese SOE. Rather than allowing EMTT to retain these funds, the GOM

claimed the balance of the payment, US$200 million, for its Human Development Fund, which has occasionally redistributed mining revenues to the Mongolian public. This GOM action left EMTT with insufficient funds to cover even basic capital needs and daily expenses.

In light of this action, investors worry that the GOM will divert future mining revenues or the proceeds of the issuance of sovereign bonds to non-related expenses. Going forward, the GOM will likely have to provide binding assurances that it will responsibly steward company interests rather than seeing state-owned companies and bond proceeds as nothing more than transfer mechanisms for payments to the Mongolian public.

Mongolia's Human Development Fund and Development Bank

The Human Development Fund

In 2008, Parliament established the *Law on the Human Development Fund (HDF)*, ostensibly Mongolia's first sovereign wealth fund; however, it does not seem to precisely function as a sovereign wealth fund. The stated purpose of the law was to fulfill campaign promises to provide every citizen with cash payments in excess of U.S. $1,000 so that the public could benefit from Mongolia's mineral wealth. The HDF is to be funded from the profits, taxes, and royalties generated by the mining industry as a whole, including large, medium and small scale projects.

The HDF basically serves as an instrument to distribute mining revenues to the citizens of Mongolia in the form of social benefits: Payments for pension and health insurance premiums; mortgage support and other loan guarantees; and payments for health and education services. The GOM has no plans to use the HDF as a conduit for Mongolian investments abroad or for FDI into Mongolia. In that sense, we find no conflict between the HDF and private sector investment.

Development Bank of Mongolia

In 2011, Parliament passed the *Law on the Development Bank* for the explicit purpose of financing major infrastructure projects and support for export-oriented industries. The Mongolian government has selected a South Korean company to manage the Development Bank, overseen by a board of directors composed of government appointees. Early plans were for the Development Bank to invest in cashmere processing, railways, power, and petroleum processing. At this point, much of the first tranche of sovereign debt, some U.S. $ 600 million, has been

disbursed. In addition to these funds, observers report that the Development Bank or the Bank of Mongolia may find itself responsible for administering the recent U.S. $1.5 billion sovereign debt issue, although it may not have much control over which projects receive these funds.

2010 Fiscal Stability Law (FSL)

In 2010, Mongolia passed the FSL as part of its Stand-By Arrangement with the International Monetary Fund which ended on September 30, 2010. The FSL establishes a stabilization fund that sets aside certain mining revenues in excess of pre-set structural revenue estimates. Savings may then be used during a downturn to finance the budget. Under the FSL, a portion of the savings generated by the Fiscal Stability Fund can be used to finance domestic and foreign investments. For example, the government is allowed to use this money to purchase long term securities offered by the Development Bank to fund its activities.

How the GOM and Parliament will divide mining revenues between the HDF and the FSL remains to be determined.

A.11 CORPORATE SOCIAL RESPONSIBILITY (CSR)

It is early days for corporate social responsibility (CSR) in Mongolia. Most Western companies make good faith efforts to work with local communities. These efforts usually take the form of specific projects aimed at providing missing infrastructure—wells, power supplies, clinics or schools—or support for education such as books and scholarships. The larger Western firms tend to follow accepted international CSR practices and underwrite a full range of CSR activities across Mongolia; however, the smaller ones, lacking sufficient resources, often limit their CSR actions to the locales in which they work. Only the largest Mongolian firms regularly undertake CSR actions, with small- to medium –sized enterprises generally (but not always) hindered by limited resources from underwriting CSR actions.

Generally, firms that pursue CSR are perceived favorably, at least within the communities in which they act. Nationally, responses range from praise from politicians to cynical condemnation by certain civil society groups of CSR actions as nothing more than an attempt to "buy" public approval.

A.12 POLITICAL VIOLENCE

Mongolia is both peaceful and stable; political violence is rare. Mongolia has held nine (out of 10) peaceful presidential and parliamentary elections in the past 17 years, though a brief but violent outbreak of civil unrest followed the disputed parliamentary elections on July 1, 2008. During that unrest, five people were killed and a political party's headquarters was burned. The violence was quickly contained and order restored, and no repeat of civil unrest has occurred since then. Indeed Mongolia held peaceful presidential elections less than a year later in May 2009, in which the incumbent president was defeated and conceded at noon the next day, and power smoothly transitioned to the winner. Most recently, Mongolia held successful and peaceful parliamentarian elections in June 2012, followed by a peaceful transition of power in August 2012 after the formation of a new government.

Mongolia has an ethnically homogenous population: 97% of the population is Khalkh Mongol. The largest minority, numbering an estimated 90,000 people, is Kazakh (Muslim), concentrated in the far western part of the country.

A more nationalist tone in politics is evident. Media reports and observer reports suggest a rising anti-foreigner sentiment among the public, mostly based on the idea of wanting Mongolian resources developed by Mongolians for the benefit of Mongolians.

This nationalist sentiment has not led to any known incidents of anti-Americanism or politically motivated damage to American projects or installations in at least the last decade. However, there has been a gradual and perceptible level of rising hostility to Chinese and Korean nationals in Mongolia. This hostility has led to some instances of improper seizure of Chinese and Korean property; and in more limited cases acts of physical violence against the persons and property of Chinese and Korean nationals resident in Mongolia. Other foreign nationals living in Mongolia have expressed concern that they may inadvertently become victims of similar hostility.

A.13 CORRUPTION

Current Views on Mongolian Corruption

In mid-2005, the USAID Mission to Mongolia, in collaboration with USAID/Washington and The Asia Foundation (TAF), funded a corruption assessment conducted by Casals & Associates, Inc. (C&A) The complete report is available at http://www.usaid.gov/mn. Follow-up surveys of the problem show that the results of this assessment remain valid in 2013. The study found that opportunities for corruption have increased at both the "petty" or administrative and "grand" or elite levels. Both types of corruption should concern Mongolians and investors, but grand corruption should be considered a more serious threat because it solidifies linkages between economic and political power that could negatively affect or ultimately derail or delay democracy and development. Several inter-related factors contribute to Mongolia's corruption problem:

- A blurring of the lines between the public and private sector brought about by systemic conflicts of interest at nearly all levels;

- A lack of transparency and access to information that surrounds many government functions and has yielded criticism that it renders the media ineffective and hinders citizen participation in policy discussions and government oversight;

- An inadequate civil service system that gives rise to a highly politicized public administration and the existence of a "spoils system;"

- Limited political will to actually implement required reforms in accordance with the law, complicated by conflicting and overlapping laws that further inhibit effective policy implementation;

- Weak government control institutions, including the Mongolian Independent Authority Against Corruption (IAAC), the Bank of Mongolia, National Audit Office, parliamentary standing committees, Prosecutor General, Generalized State Inspection Agency, State Property Committee, and departments within the Ministry of Finance.

  The aforementioned systemic shortcomings have allowed for an evolution of corruption in Mongolia that "follows the money," meaning that graft on the

most significant scales generally occurs most often in the industries and sectors where there is the most potential for financial gain.

During the early 1990s, in the early transition toward democracy and market economy, two areas that offered particular opportunities for grand scale corruption at that time were foreign donor assistance and privatization of state-owned enterprises. As Mongolia later embarked on further policy changes to institutionalize capitalistic practices, corruption reared its head in the process of privatizing public land. As the economy develops, corruption has become endemic in the banking and mining sectors. There also are several areas that provide stable and consistent opportunities for corruption, both grand and administrative in nature, such as for procurement opportunities, issuance of permits and licenses, customs, inspections, the justice sector, among high-level elected and appointed officials, and in the conduct of a variety of day-to-day citizen- and business-to-government transactions, notably in education, health care, and city services.

Despite the fact that few of the conditions to prevent corruption from getting worse are in place, the situation has not reached the levels that are evident in many other countries with contexts and histories similar to that of Mongolia. Perhaps more importantly, there are a number of efforts underway to actively combat corruption, including:

- Government commitments to international anti-corruption regimes and protocols, such as the Anti-Corruption Plan of the Asian Development Bank/Organization of Economic Cooperation and Development (ADB/OECD) and the United Nations Convention Against Corruption (UNCAC);

- Development of a National Program for Combating Corruption and formation of a National Council for coordinating the Program and a Parliamentary Anti-Corruption Working Group;

- Implementation of an anti-corruption law that has included the formation of an independent anti-corruption body;

- Short- and medium-term anti-corruption advocacy and "watchdog" programs initiated by civil society organizations, often with international donor support.

There is, in fact, time for Mongolians and the international community to nurture these efforts and take further action before corruption grows too large to rein in. In

general, the main need in Mongolia is to develop effective disincentives for corrupt behavior at both the administrative and political levels. In its broadest configuration, this implies a strategy of increasing transparency and effective citizen oversight, as well as intra-governmental checks and balances. Without these major changes, administrative reforms may provide some small improvements, but they are unlikely to solve the problem. Specifically, the aforementioned USAID-sponsored report of 2005 made several strategic recommendations, which remain relevant in 2013, including:

- Diplomatic engagement focused on keeping anti-corruption issues high on the policy agenda, promoting implementation of existing laws related to anti-corruption, and highlighting the need for further measures to promote transparency and improved donor coordination;

- General programmatic recommendations to address conflicts of interest, transparency/access to information, civil service reforms, and the independent anti-corruption body, with a definitive focus on engaging civil society and promoting public participation utilizing UNCAC as a framework; and

- Specific programmatic recommendations to address loci of corruption, such as citizen- and business-to-government transactions, procurement, privatization, customs, land use, mining, banking, the justice sector, and the political and economic elite.

In addition, the reputable international anti-corruption NGO Transparency International (TI) opened a national chapter in Mongolia in 2004 (for more information, see: www.transparency.org). U.S. technical advisors have worked with TI to train Mongolian staff to monitor corruption and to advocate on behalf of anti-corruption legislation and. TI first included Mongolia in its annual "Perceptions of Corruption" survey in September 2004. In that initial survey, Mongolia ranked 85 out of 145 countries and its score of 3 on the Corruption Perception Index was "poor." (TI's CPI Score relates to "perceptions" of the degree of corruption as seen by business people and country analysts and ranges between 10 (highly clean) and 0 (highly corrupt).. 2009 found Mongolia dropping to 124 out of 180 nations, and declining to a poorer score of 2.7; 2010 found Mongolia 116 out of 178, with a score of 2.7; and 2011 saw no improvement, with Mongolia staying in the bottom range with a score of 2.7. However, using a new methodology TI reported that in 2012 Mongolia rose to 94th out of 176 countries from 120th in 2011.

Current Anti-Corruption Law

In 2006, Parliament passed the *Anti-Corruption Law* (ACL), a significant milestone in Mongolia's efforts against corruption. The legislation had been under consideration since 1999. The ACL created an independent investigative body, the Independent Authority Against Corruption (IAAC). The IAAC has four sections. The Prevention and Education Section works to prevent corruption and educate the public on anti-corruption legal requirements. The Investigation Section receives corruption cases and executes investigations. The third section collects, checks, and analyzes the legally required property and income statements of government officials. The fourth section, the IAAC's Secretariat, handles administrative tasks. The IAAC formally began operations in August 2007. (For a review of the IAAC's activities from its inception through the present see The Asia Foundation Mongolia: http://asiafoundation.org/publications)

Recent Conviction of Former Senior Official

On August 2, 2012, former President of Mongolia, N. Enkhbayar (and three other co-defendants) was convicted on five corruption charges brought against him by the IAAC and the Chief Prosecutor of Mongolia. President Enkhbayar is in the final stages of the appeals process, and we expect the full panel of the Supreme Court of Mongolia to rule on his appeal in the first quarter of 2013. However, observers remain ambivalent over the implications of the conviction regardless of how the court finally rules. Some groups have argued—including Enkhbayar's defense team—that case was a spurious, politically motivated attack to prevent the President from running in the 2012 parliamentary elections and the coming 2013 presidential election. Others assert that even if the charges have a political dimension to them, that the very act of going after such a senior figure sends a clear message to others that senior politicians can no longer hide behind their current and former offices.

Anti-Corruption Resources Available to U.S. Citizens

U.S. Foreign Corrupt Practices Act: In 1977, the United States enacted the Foreign Corrupt Practices Act (FCPA), which makes it unlawful for a U.S. person, and certain foreign issuers of securities, to make a corrupt payment to foreign public officials for the purpose of obtaining or retaining business for or with, or directing business to, any person. The FCPA also applies to foreign firms and persons who take any act in furtherance of such a corrupt payment while in the

United States. For more detailed information on the FCPA, see the FCPA Lay-Person's Guide at: http://www.justice.gov/criminal/fraud/docs/dojdocb.html.

Guidance on the U.S. FCPA: The Department of Justice's (DOJ) FCPA Opinion Procedure enables U.S. firms and individuals to request a statement of the Justice Department's present enforcement intentions under the anti-bribery provisions of the FCPA regarding any proposed business conduct. Opinion procedures are available on DOJ's Fraud Section Website at www.justice.gov/criminal/fraud/fcpa. Although the Department of Commerce has no enforcement role with respect to the FCPA, it supplies general guidance to U.S. exporters who have questions about the FCPA and about international developments concerning the FCPA. Also, see the Office of the Chief Counsel for International Counsel, U.S. Department of Commerce, Website, at http://www.ogc.doc.gov/trans_anti_bribery.html.

Other Assistance for U.S. Businesses: The U.S. Department of Commerce offers several services to aid U.S. businesses seeking to address business-related corruption issues. For example, the U.S. and Foreign Commercial Service can provide services that may assist U.S. companies in conducting their due diligence as part of the company's overarching compliance program when choosing business partners or agents overseas. The U.S. Foreign and Commercial Service can be reached directly through its offices in every major U.S. and foreign city, or through its Website at www.trade.gov/cs.

The Departments of Commerce and State provide worldwide support for qualified U.S. companies bidding on foreign government contracts through the Commerce Department's Advocacy Center and State's Office of Commercial and Business Affairs. Problems, including alleged corruption by foreign governments or competitors, encountered by U.S. companies in seeking such foreign business opportunities can be brought to the attention of appropriate U.S. government officials, including local embassy personnel and through the Department of Commerce Trade Compliance Center "Report A Trade Barrier" Website at tcc.export.gov/Report_a_Barrier/index.asp.

Exporters and investors should be aware that generally all countries prohibit the bribery of their public officials, and prohibit their officials from soliciting bribes under domestic laws. Most countries are required to criminalize such bribery and other acts of corruption by virtue of being parties to various international conventions discussed above.

A.14 BILATERAL INVESTMENT AGREEMENTS

Reporter	*Partner*	*Date of Signature*	*Entry in to force*
Mongolia	Austria	19-May-01	1-May-02
	Belarus	28-May-01	1-Dec-01
	Belgium/Luxembourg	3-Mar-92	15-Apr-04
	Bulgaria	6-Jun-00	----------
	China	25-Aug-91	1-Nov-93
	Croatia	8-Aug-06	----------
	Cuba	26-March-99	----------
	Czech Republic	13-Feb-98	5-Jul-99
	Denmark	13-Mar-95	2-Apr-96
	Egypt	27-Apr-04	25-Jan-05
	Finland	15-May-07	----------
	France	8-Nov-91	22-Dec-93
	Germany	26-Jun-91	23-Jun-96
	Hungary	13-Sep-94	29-Aug-95
	India	3-Jan-01	29-Apr-02
	Indonesia	4-Mar-97	13-Apr-99
	Israel	25-Nov-03	2-Sep-04
	Italy	15-Jan-93	1-Sep-95
	Japan	15-Feb-01	24-Mar-02
	Kazakhstan	2-Dec-94	3-Mar-95
	DPR of Korea	10-Nov-03	----------
	Republic of Korea	28-Mar-91	30-Apr-91
	Kuwait	15-Mar-98	1-May-00
	Kyrgyzstan	5-Dec-99	----------
	Lao People's DR	3-Mar-94	29-Dec-94
	Lithuania	27-Jun-03	3-May-04
	Malaysia	27-Jul-95	14-Jan-96
	Netherlands	9-Mar-95	1-Jun-96
	Philippines	1-Sep-00	1-Nov-01
	Poland	8-Nov-95	26-Mar-96
	Qatar	29-Nov-07	----------
	Romania	6-Nov-95	15-Aug-96
	Russian Federation	29-Nov-95	----------
	Singapore	24-Jul-95	14-Jan-96
	Sweden	20-Oct-03	1-Jun-04
	Switzerland	29-Jan-97	9-Sep-99
	Tajikistan	20-Mar-09	16-Sep-09
	Turkey	16-Mar-98	22-May-00
	Ukraine	5-Nov-92	5-Nov-92
	UAE	21-Feb-01	----------
	United Kingdom	4-Oct-91	4-Oct-91
	United States	6-Oct-94	4-Jan-97
	Vietnam	17-Apr-00	13-Dec-01

(UNCTD: http://www.unctad.org/sections/dite_pcbb/docs/bits_mongolia.pdf)

Taxation Issues: Revocation of Double Taxation Treaties (DTTs)

Mongolia is revoking its double-taxation treaties (DTTs) with the Netherlands, Kuwait, Luxembourg, and the United Arab Emirates; and may void its remaining DTTs. The GOM argued (with some correctness according to the IMF) that many companies were not actually headquartered in the nations with which Mongolia maintained these DTTs and were using the treaties to avoid taxation in Mongolia, denying Mongolia substantial revenues. The GOM has asserted that it would never have entered into DTTs if it had fully understood their implications, although the IMF had long advised them to be wary of the impact of DTTs on revenues.

Both foreign and domestic investors—many Mongolian business use DTTs to minimize their tax bills—have strongly criticized the GOM and Parliament for revoking key DTTs. Investors also argue that revoking DTTs sends the message that Mongolia does not keep its agreements; and perhaps is too risky a place to invest. They suggest that Mongolia should have employed other methods short of full revocation, because doing so would have protected Mongolia's interests while preserving Mongolia's reputation among investors.

Revisions of the Mongolian Tax Code

The *2006 Tax Code* taxes all salary and wage income at 10% while allowing interest income and capital gains to be tax free until 2013. As of January 2013, all types of income will be taxed at a rate of 10%.

Businesses are taxed at 10 % for profits less than 3 billion Tugriks (US$ 2.2 million) and at 25% for any profit 3 billion or above. The Value Added Tax (VAT) is currently 10%. Mongolia also imposes a variety of excise taxes and licensing fees upon a variety of activities and imports.

The OT project has had a salutary effect on key tax provisions long-desired by foreign and domestic investors alike. Before OT, firms could only carry-forward losses for two (2) years after incurring the loss. While most businesses approved of this provision, many, especially that requiring large and long-term infrastructure development, noted that the two year carry-forward limit was insufficient for projects with long development lead times, as is typical of most large-scale mining developments. As a condition precedent of passing the OT Agreement, Parliament extended loss-carry forward to eight (8) years.

Less positively, Mongolia's Parliament has revoked and refuses to reinstate an exemption available on value-added taxes (VAT) of 10% on equipment used to bring a given mine into production, except on equipment to be used in the production of highly processed mining products. For example, if OT decides to smelt copper, imported equipment for the production of metallic copper might qualify for a 10% reduction on VAT. However, in an effort to promote value-added production in Mongolia, the GOM defines the production of copper concentrate as a non-value-added output; and so, equipment imported only to concentrate copper ore would not qualify for the 10% VAT exemption.

Most jurisdictions, recognizing that most mines have long development lead times before production begins, either waive or do not tax such imports at all. Parliament, with no consultation with investors, international experts, or its own tax officials, chose to impose the VAT, which immediately makes Mongolian mining costs 10% higher than they would otherwise be, impairing competitiveness and dramatically varying from global practice.

Whether any mining output qualifies for this exemption seems completely at the discretion of the GOM, which has not set out in regulation or statute a process by which it will regularly adjudicate such VAT exemption requests.

Social Insurance Taxes

Foreign and domestic investors consistently argue that they bear too much of the social security costs for each domestic and foreign hire under the amended 2008 *Social Insurance Law*. Foreign employees became liable for social insurance taxes if they reside within Mongolia for 181 days within a 365 day period. Employers must pay a tax equivalent to 13% of the annual wage on both domestic and foreign workers. Given that average state pension has yet to broach even US$150 per month, employers argue that pensions are not commensurate with contributions. In addition, workers must pay in for twenty years to be vested, highly unlikely for many ex-patriot employees, who reside in Mongolia for less than three years on average. Local and foreign business associations are attempting to work with both the government and Parliament to address these perceived inequalities.

A.15 OPIC AND OTHER INVESTMENT INSURANCE PROGRAMS

The U.S. government's Overseas Private Investment Corporation (OPIC: (www.opic.gov) offers loans and political risk insurance to American investors involved in most sectors of the Mongolian economy.

In addition, OPIC and the GOM have signed and ratified an *Investment Incentive Agreement* that requires the GOM to extend national treatment to OPIC financed projects in Mongolia. For example, under this agreement mining licenses of firms receiving an OPIC loan may be pledged as collateral to OPIC, a right not normally bestowed on foreign financial entities.

The U.S. Export-Import Bank (EXIM: www.exim.gov) offers programs in Mongolia for short-, medium-, and long-term transactions in the public sector and for short- and medium-term transactions in the private sector.

Mongolia is a member of the Multilateral Investment Guarantee Agency (MIGA: www.miga.org).

A. 16 LABOR

The Mongolian labor pool is generally educated, young, and adaptable, but shortages exist in most professional categories requiring advanced degrees or vocational training. Only time and investment in education and training will remedy this deficit of trained, skilled labor. Unskilled labor is sufficiently available.

Foreign-invested companies deal with these shortages by providing in-country training to their staffs, raising salaries to retain employees, or hiring expatriate workers to provide skills and expertise unavailable in Mongolia. In addition, the USG funded Millennium Challenge Corporation (MCC) is currently underwriting a five-year training and vocational education program (TVET) to develop sustainable programs to help Mongolia meet its needs for skilled *blue- collar* workers (http://www.mca.mn or http://www.mcc.gov).

Mongolian labor law is not particularly restrictive. Investors can locate and hire workers without using hiring agencies—as long as hiring practices are consistent with the Mongolian Labor Law. However, Mongolian law requires companies to employ Mongolian workers in all labor categories whenever a Mongolian can perform the task as well as a foreigner. This law generally applies to unskilled labor categories and not areas where a high degree of technical expertise nonexistent in Mongolia is required. The law does provide an escape hatch for employers. Should an employer seek to hire a non-Mongolian laborer and cannot obtain a waiver from the Ministry of Labor for that employee, the employer can pay a monthly waiver fee. Depending on a project's importance, the Ministry of Labor can exempt employers from 50% of the waiver fees per worker. However, employers report that difficulty in obtaining waivers, in part because of public concerns that foreign and domestic companies are not hiring Mongolians at an *appropriate level*.

Impact of the Strategic Entities Foreign Investment Law (SEFIL) on Labor

The recently passed SEFIL has raised concerns among employers that they will not be free to hire the labor they need in the three affected sectors of resource extraction, banking and finance, and media and telecommunications. One of SEFIL's key provisions requires foreign investors to use Mongolian labor and apparently allows the GOM to intervene in hiring and firing and related labor policies as a condition of authorizing foreign investment into the relevant sector. How this legislative remit will be implemented through the regulations remains

unclear; however, investors have conveyed that they have little appetite to cede broad control over their workforces to the GOM. For a fuller discussion of SEFIL see Chapter A.1.

***ILO conventions* (http://www.ilo.org):**

Convention	Ratification date	Status
C29 Forced Labor Convention, 1930	15:03:2005	ratified
C59 Minimum Age (Industry) Convention (Revised), 1937	03:06:1969	denounced on 16:12:2002
C87 Freedom of Association and Protection of the Right to Organize Convention, 1948	03:06:1969	ratified
C98 Right to Organize and Collective Bargaining Convention, 1949	03:06:1969	ratified
C100 Equal Remuneration Convention, 1951	03:06:1969	ratified
C103 Maternity Protection Convention (Revised), 1952	03:06:1969	ratified
C105 Abolition of Forced Labor Convention, 1957	15:03:2005	ratified
C111 Discrimination (Employment and Occupation) Convention, 1958	03:06:1969	ratified
C122 Employment Policy Convention, 1964	24:11:1976	ratified
C123 Minimum Age (Underground Work) Convention, 1965	03:12:1981	ratified
C135 Workers' Representatives Convention, 1971	08:10:1996	ratified
C138 Minimum Age Convention, 1973	16:12:2002	ratified
C144 Tripartite Consultation (International Labor Standards) Convention, 1976	10:08:1998	ratified
C155 Occupational Safety and Health Convention, 1981	03:02:1998	ratified
C159 Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983	03:02:1998	ratified
C182 Worst Forms of Child Labor Convention, 1999	26:02:2001	Ratified

A. 17 FOREIGN TRADE ZONES/FREE PORTS

The Mongolian government launched its free trade zone (FTZ) program in 2004. Two FTZ areas are located along the Mongolia spur of the trans-Siberian highway: one in the north at the Russia-Mongolia border town of Altanbulag and the other in the south at the Chinese-Mongolia border at the town of Zamyn-Uud. Both FTZs are relatively inactive, with development pending at either site. A third FTZ is located at the port of entry of Tsagaan Nuur in Bayan-Olgii province.

There are concerns about the Mongolian free trade zones in general and Zamyn-Uud in particular. In April 2004, the USAID sponsored Economic Policy Reform and Competitiveness Project (EPRC: http://www.eprc-chemonics.biz/) made the following observations of Mongolia's FTZ Program. In 2013, these issues remain concerns:

1. Benchmarking of Mongolia's FTZ Program against current successful international practices shows deficiencies in the legal and regulatory framework as well as in the process being followed to establish FTZs in the country.

2. Lack of implementing regulations and procedural definitions encapsulated in transparency and predictability quotient required to implement key international best practices.

3. A process of due diligence, including a cost-benefit analysis, has not been completed for the proposed FTZs.

4. Identifiable funding is not in place to meet off-site infrastructure requirements for the three FTZ sites.

5. Deviations from international best practices in the process of implementing FTZs repeats mistakes made in other countries and may lead to "hidden costs" or the provision of subsidies that the government of Mongolia did not foresee or which will have been granted at the expense of higher priorities.

A. 18 FOREIGN DIRECT INVESTMENT STATISTICS

The Foreign Investment Registration and Review Department of the Ministry of Economic Development (FIRRD), the successor to the Foreign Investment and Foreign Trade Agency (FIFTA), collects and disseminates data for tracking foreign direct investment (FDI) in Mongolia, but FIRRD's data has limitations.

- Many foreign firms provide FIRRD with incomplete data on their annual investment amounts. FIRRD's registration regime requires companies to document business plans and total FDI for the coming year. FIRRD uses these reports to determine FDI for the year. However, concerns in the business community that FIRRD cannot secure proprietary and confidential business information means that many firms withhold data on their activities.

- Mongolia suffers from promised investment that does not materialize or which comes in at a lower level than originally stated. FIRRD does not update reports to account for these or other changes to investments during the year.

- Some investors claim certain jurisdictions as tax homes to minimize taxes, a fact not conveyed by FIRDD's data. Consequently, this data suggests that much of Mongolia's investment originates from such places as the British Virgin Islands, the Netherlands, or Singapore, when, in fact, the investment comes from Canada, the United States, Australia or other jurisdictions.

Data not Available on Mongolian Investment Abroad

To our knowledge neither FIRRD nor any other Mongolian agency tracks Mongolia's direct investment abroad.

A. TRADE TURNOVER (USD MLN.)

Year	Total Turnover	Percent comp.	Exports	Percent comp.	Imports	Percentage comp.	Balance
2000	**1,150**	**119%**	**536**	**118%**	**615**	**120%**	**-79**
2001	1,159	101.%	513	97%	638	104%	-116
2002	1,215	105%	524	101%	691	108%	-166
2003	1,417	117%	616	116%	801	116%	-185
2004	1,891	133%	870	141%	1,021	128%	-152
2005	2,249	119%	1,065	122%	1,184	116%	-120
2006	3,018	134%	1,529	144%	1,489	126%	39
2007	4,119	136%	1949	126%	2,170	146%	-221
2008	6,155	149%	2,539	130%	3,616	167%	-1077

Source: National Statistics Commission of Mongolia, December 2009, 2010

B. TOP 10 INVESTOR COUNTRIES (THOUSAND USD)

№	Countries	%	Total	1990-2004	2005	2006	2007	2008	2009	2010	2011	2012.06
1	China	31.71	**3,650,996.96**	441,786.38	227,922.28	172,014.03	339,614.67	497,800.88	613,058.80	176,038.36	1,015,265.04	167,496.52
2	Netherlands	23.16	**2,667,036.01**	5,265.58	221.70	475.86	58.50	4,069.20	51,028.60	232,962.18	1,816,714.10	556,240.28
3	Luxemburg	9.01	**1,037,196.26**	2,911.70	1,809.30	10.00	3,118.91	195.80	1,012.65	25,589.47	476,652.07	525,896.34
4	UK Virgin Islands	7.48	**861,441.27**	48,394.23	5,033.92	6,111.67	35,449.00	6,157.89	19,305.18	101,986.27	610,933.11	28,070.02
5	Singapore	5.45	**627,075.05**	8,513.28	4,645.78	728.60	700.00	32,339.86	9,359.44	31,075.00	402,738.17	136,974.92
6	Canada	4.23	**487,595.94**	174,206.58	1,542.25	72,180.37	497.15	2,739.57	1,028.00	147,811.12	72,288.16	26,950.22
7	South Korea	2.93	**337,736.42**	85,180.14	19,004.49	16,434.78	22,991.38	41,765.41	31,673.98	38,763.43	54,972.59	26,950.22
8	USA	2.54	**292,657.89**	45,725.48	5,564.06	37,165.78	4,285.67	6,466.89	2,571.52	13,911.20	127,238.95	49,728.36
9	Hong Kong SAR	1.80	**207,007.21**	25,033.35	773.02	350.50	8,255.51	1,757.81	11,032.44	80,148.35	54,366.84	25,289.38
10	Japan	1.60	**184,752.21**	66,208.26	5,840.80	4,727.59	2,450.10	46,623.46	5,594.78	7,125.37	21,460.68	24,721.16

Source: FIRRD

C. TOP 25 INVESTOR ENTITIES (FDI – 2010)

No	Entity	Equity	Foreign	Domestic	Sectors	Countries
1.	Oyutolgoi	***65,005,920***	*65,005,913*	-	Geological prospecting and exploration	Netherlands-Mongolia
2.	MD Securities	***43,603,000***	*43,500,000*	-	Trade and catering service	Virgin Islands (UK)
3.	MCS mining	***25,100,000***	*25,000,000*	-	Geological prospecting and exploration	Singapore
4.	HSBC	***10,000,000***	*9,990,000*	-	Others	South Korea
5.	Wagner Asia Leasing	***9,890,224***	*9,890,224*	-	Trade and catering service	USA
6.	Seoul Senior Tower	***7,840,000***	*7,140,000*	-	Health and beauty services	South Korea
7.	Khan Bank	***20,599,356***	*7,073,699*	*3,393,576*	Bank and financial services	USA-China /Hong Kong/-Japan-Mongolia
8.	Gyantbaylag	***7,000,000***	*7,000,000*	-	Geological prospecting and exploration	Virgin Islands (UK)
9.	Globalcom	***4,500,000***	*4,500,000*	-	Trade and catering service	Virgin Islands (UK)
10.	Louis Vuitton Mongolia LLC	***6,000,000***	*4,000,000*	-	Trade and catering service	France
11.	Credit Bank	***9,585,108***	*3,900,686*	-	Bank and financial services	Cyprus
12.	MCS Asia Pacific	***15,000,000***	*3,850,000*	*3,150,000*	Production of foods and beverages	Singapore-Mongolia
13.	Shangri-La Ulaanbaatar Hotel	***10,000,000***	*3,820,000*	-	Trade and catering service	Virgin Islands (UK)
14.	EAM Bayan-Ulgii	***3,548,107***	*3,538,107*	-	Geological prospecting and exploration	Canada
15.	Handy Soft Rich	***3,000,000***	*2,900,000*	-	Trade and catering service	South Korea
16.	Tethys Mining	***26,992,495***	*2,793,974*	-	Geological prospecting and exploration	Switzerland
17.	Big Mogul Coal and Energy	***4,627,722***	*2,776,633*	*1,851,089*	Geological prospecting and exploration	Luxemburg-Mongolia
18.	Hong Kong Sunkfa group Mongol	***1,600,000***	*1,600,000*	-	Transportation	China-China /Hong Kong/
19.	EAM Exploration	***1,511,710***	*1,501,710*	-	Geological prospecting and exploration	Canada
20.	Santanmores	***5,300,000***	*1,500,000*	-	Geological prospecting and exploration	South Korea

Source: FIRRD

D. FDI by COUNTRY in 1000s USD (*Source: FIRRD)*

№	Country	%	Total	1990-2004	2005	2006	2007	2008	2009	2010	2011	2012.06.30
1	China	32,71	**3,650,996,96**	441,786,38	227,922,28	172,014,03	339,614,67	497,800,88	613,058,80	176,038,36	1,015,265,04	167,496,52
2	Netherlands	23,16	**2,667,036,01**	5,265,58	221,70	475,86	58,50	4,069,20	51,028,60	232,962,18	1,816,714,10	556,240,28
3	Luxemburg	9,01	**1,037 196,24**	2,911,70	1,809,30	10,00	3,118,917	195,80	1,012,65	25,589,47	476,652,07	525,896,34
4	UK Virgin Islands	7,48	**861,441,29**	48,394,23	5,033,92	6,111,67	35,449,00	6,157,89	19,305,18	101,986,27	610,933,11	28,070,02
5	Singapore	5,45	**627,075,05**	8,513,28	4,645,78	728,60	700,00	32,339,86	9,359,44	31,075,00	402,738,17	136,974,92
6	Canada	4,23	**487,595,95**	174,206,58	1,542,25	72,180,37	497,15	2,739,57	1,028,00	147,11,12	72,288,16	15,302,75
7	South Korea	2,93	**337,736,42**	85,180,14	19,004,49	16,434,78	22,991,38	41,765,41	31,673,98	38,763,43	54,972,59	26,950,22
8	USA	2,54	**292,657,91**	45,25,48	5,564,06	37,165,78	4,285,67	6,466,89	2,571,52	13,911,20	127,238,95	49,728,36
9	China /Hong Kong /	1,80	**207,007,21**	25,033,35	773,02	350,50	8,255,51	1,757,81	11,032,44	80,148,35	54,366,84	25,289,38
10	Japan	1,60	**184,752,21**	66,208,26	5,840,80	4,727,59	2,450,10	46,623,46	5,594,78	7,125,37	21,460,68	24,721,16
11	Australia	1,52	**174,466,09**	3,730,19	12,066,75	384,40	289,20	3,361,90	516,50	2,273,80	82,453,32	69,390,03
12	Russia	1,46	**168,507,92**	37,163,16	7,450,14	11,654,52	39,774,38	3,795,42	6,139,20	2,273,18	58,11,87	2,246,04
13	Bermuda	1,12	**128 814,85**	1,604,48	4,962,86		30,30	6,46		114,455,56	4,387,49	3,367,70
14	Switzerland	0,76	**87,272,09**	5,732,89	2,563,50	6,676,45	366,52	90,00	22,190,40	3,850,22	37,161,16	8,640,94
15	Great Britain	0,67	**76,577,25**	25,813,22	6,347,90	9,013,47	2,429,00	6,057,76	972,15	693,07	17,910,90	7,339,78
16	Cayman Islands	0,64	**74 052,36**	264,02		2,400,00		35,069,33	321,45	10,363,06	25,404,54	229,97
17	Germany	0,51	**58,537,49**	10,369,80	370,20	1,386,27	817,49	580,01	13,281,00	932,64	26,631,80	4,168,29
18	France	0,38	**43,414,07**	326,99	35,00	66,30	12,550,00	170,08	2,376,34	4,499,79	15,050,66	8,338,91
19	Barbados	0,35	**40,348,83**	20,00	10,00						30,098,89	10,219,94
20	Bulgaria	0,27	**31,067,98**	30,778,48		17,00	15,00	7,50		50,00	150,00	50,00
21	Vietnam	0,22	**24,972,54**	505,80	321,67	20,448,54	674,73	1,270,11	442,00	780,00	519,70	100,00
22	Italy	0,21	**24,533,70**	8,265,85	5,219,43	44,90	37,50	856,97	340,00	448,00	4,482,74	4,838,32
23	China /Taiwan/	0,17	**20,096,05**	11,123,37	474,75	20,10	590,80	6,443,49	997,50	161,30	99,74	185,00
24	Islands of Saint Kitts & Nevis	0,17	**19,908,26**	5,00			10,00		173,70	19,529,56	90,00	100,00
25	Malaysia	0,16	**18,509,75**	4,529,19	2,993,00	711,60	60,75	5,340,69	445,12	331,50	2,882,37	1,215,53
26	The Bahamas	0,15	**17,638,29**	17,435,79		102,00				90,00	10,50	
27	Kazakhstan	0,14	**16,221,88**	551,76	35,30	31,30	11,522,22	214,57	1,515,00	418,00	1,195,19	738,54
28	Portugal	0,12	**13,506,00**	13,506,00								
29	Cyprus	0,10	**11,797,52**	244,08		10,00	7,091,52	71,00	190,00	4,001,05	100,00	89,87
30	Mauritius	0,09	**10,068,59**			12,00					9,950,91	105,68
31	Israel	0,08	**9,111,34**	8,094,91	10,00	20,00	23,70	15,00		193,07	754,66	
32	Czech Republic	0,07	**8,636,04**	4,145,87	24,00	52,22	80,61	2,015,04	80,00	436,00	457,47	1,344,83
33	Ukraine	0,07	**8,053,04**	6,148,12	24,95	89,90	66,90	45,00	725,63	190,04	502,50	260,00
34	India	0,07	**7,602,69**	334,00	10,00	128,00	4,925,00	690,00	1,155,00	285,69	75,00	
35	Turkey	0,06	**7,388,48**	1,910,27	80,00	32,00	114,30	338,60	514,50	379,00	2,259,35	1,760,46
36	New Zealand	0,06	**7,309,59**	2,489,20	1,139,60	60,00	225,95	1,706,28	580,00	100,00	759,58	249,00
37	Belgium	0,06	**6,570,94**	2,744,72		2,190,90	134,46	75,00	27,62	100,00	807,43	490,80
38	China /Macao/	0,04	4,461,00	4,461,00								

№	Country	%	Total	1990-2004	2005	2006	2007	2008	2009	2010	2011	2012.06.30
39	Lichtenstein	0,03	3,336,45	3,336,45								
40	Thailand	0,02	**2,787,10**	76,00				3,00	108,10	100,00	2,500,00	
41	Poland	0,02	**2,456,15**	1,780,26	10,00	16,00	20,00	10,00	150,00	50,00	319,89	100,00
42	Austria	0,02	**2,335,14**	1,984,85	10,00	101,87	6,40	191,52		40,50		
43	Hungary	0,02	**2,335,00**	1,162,48	12,71	54,20	18,00		240,00	408,29	203,40	235,92
44	Spain	0,02	**2,042,42**	59,60		20,00	10,00				1,702,82	250,00
45	Uzbekistan	0,02	**1,973,57**		3,20			100,00	756,10	845,00	269,28	
46	DPRK	0,01	**1,661,28**	1,162.61	66,50	22,75	50,00			100,00	159,42	100,00
47	Philippines	0,01	**1,606,89**				4,90				90,00	1,511,99
48	Panama	0,01	**1,457,15**	1,055,45	7,70				100,00	130,50	163,50	
49	Syria	0,01	**1,432,02**	285,89	5,10	15,00		105,00			1,021,03	
50	Slovakia	0,01	**1,372,06**	869,06		273,00	50,00					180,00
51	British Guernsey Island	0,01	**1 267,61**								417,65	849,96
52	British Man Island	0,01	**1,119,96**							200,00	839,97	79,99
53	Pakistan	0,01	**931,05**	698,95	15,00	6,00	21,10	80,00		110,00		
54	Belize	0,01	**925,84**		13,00	175,88			85,00	102,00	199,99	349,97
55	Kyrgyzstan	0,01	**820,50**	469,50	1,00				120,00	60,00	80,00	90,00
56	Antigua & Barbuda	0,01	**729,86**	729,86								
57	Seychelles Islands	0,01	**713,00**				10,00	17,00		43,00	100,00	543,00
58	Lebanon	0,01	**687,443**	134,94		7,92					333,74	210,84
59	Belarus	0,01	**684,96**	27,00				56,00		186,06	314,90	101,00
60	Sweden	0,01	**670,64**	13,10	10,90		466,00	30,00	40,10	100,00		10,54
61	Denmark	0,01	**592,27**	90,30							141,97	360,00
62	Malta	0,00	**547,14**								252,09	295,05
63	Ireland	0,00	**533,23**	46,25	9,00		9,00		76,54	179,35	213,10	
64	Bangladesh	0,00	**515,00**				10,00		105,00	100,00	200,00	100,00
65	Mauritania	0,00	**510,00**					30,00	480,00			
66	Slovenia	0,00	**479,42**								230,99	248,43
67	United Arab Emirates	0,00	**475,49**								375,39	100,00
68	Iran	0,00	**453,00**		18,00		2,00			233,00	100,00	100,00
69	Anguilla	0,00	**400,00**							200,00	200,00	
70	Azerbaijan	0,00	**350,00**				20,00			190,00	140,00	
71	Indonesia	0,00	**319,95**			20,00			84,00		215,95	
72	Gibraltar	0,00	**291,00**	176,00	15,00					100,00		
73	Norway	0,00	**287,68**	67,15	10,00	5,00	6,00	90,00		15,00	89,55	4,98
74	Yugoslavia	0,00	**285,07**	280,17	4,90							
75	Armenia	0,00	**270,05**	239,60	15,30	6,60		8,55				
76	Saudi Arabia	0,00	**198,30**	198,30								

№	Country	%	Total	1990-2004	2005	2006	2007	2008	2009	2010	2011	2012.06.30
77	Kuwait	0,00	**179,96**								179,96	
78	Cambodia	0,00	**168,30**		153,30	15,00						
79	Croatia	0,00	**14,600**	14,600								
80	Turkmenistan	0,00	**130,00**							30,00		100,00
81	South Africa	0,00	**126,00**								126,00	
82	Estonia	0,00	**119,00**	17,00								102,00
83	Iraq	0,00	**115,00**	15,00						100,00		
84	Samoa	0,00	**200,00**									200,00
85	Romania	0,00	**100,00**							100,00		
86	Georgia	0,00	**73,05**	18,05			5,00		50,00			
87	Finland	0,00	**71,53**	20,00	8,17	7,00		6,50			15,97	13,89
88	Argentina	0,00	**55,00**						55,00			
89	Greece	0,00	**49,00**	49,00								
90	Moldavia	0,00	**41,50**	39,00			2,50					
91	Qatar	0,00	**40,00**					10,00	30,00			
92	Nepal	0,00	**35,00**	5,00					30,00			
93	Egypt	0,00	**33,33**									33,33
94	Turks and Caicos Islands	0,00	**31,00**		3,10					27,90		
95	Tajikistan	0,00	**30,00**	10,00	10,00	10,00						
96	Sri Lanka	0,00	**28,00**					28,00				
97	British Indian Ocean territory	0,00	**25,00**			25,00						
98	Jordan	0,00	**24,93**	21,60		3,33						
99	Liberia	0,00	**20,50**	20,50								
100	Morocco	0,00	**20,00**					20,00				
101	Honduras	0,00	**19,50**	13,50	6,00							
102	Serbia Montenegro	0,00	**15,00**	8,25	6,75							
103	Cameroon	0,00	**12,00**	12,00								
104	Latvia	0,00	**10,00**	10,00								
105	Marshall Islands	0,00	**10,00**	10,00								
106	Myanmar	0,00	**10,00**		10,00							
107	Outlying Islands	0,00	**10,00**			10,00						
108	Saint Helena	0,00	**6,00**		6,00							
109	Dominion of Melchizedek	0,00	**5,61**	5,61								
110	Nigeria	0,00	**5,00**	5,00								
111	Ethiopia	0,00	**2,50**	2,50								
112	US Virgin Islands	0,00	**2,00**		2,00							
	TOTAL	**100**	**11,514763,21**	**1,129,894,91**	**316,839,28**	**366,545,00**	**499,962,11**	**708,922,55**	**801,158,33**	**1,025,995,88**	**4,986,034,12**	**1,688,410,45**

E. **Foreign Invested Companies by Country**

№	Country	%	Total	1990-2004	2005	2006	2007	2008	2009	2010	2011	2012.06.30
1	China	49,11	**5,951**	1,534	532	827	876	859	299	376	434	214
2	Korea	17.82	**2,159**	632	203	274	332	302	113	117	122	64
3	Russia	6.74	**817**	433	54	105	72	51	37	17	34	14
4	Japan	4,19	**508**	190	29	56	60	58	35	23	35	22
5	USA	2,38	**288**	98	19	28	27	44	11	14	36	11
6	UK Virgin Islands	2.01	**243**	27	9	12	26	17	23	37	67	25
7	Germany	1,57	**190**	102	10	18	13	13	8	7	9	10
8	Singapore	1,45	**176**	52	9	5	10	21	4	22	31	22
9	China /Hong Kong/	1,33	**161**	54	9	5	10	14	10	27	20	12
10	Vietnam	1,28	**155**	25	14	34	46	21	3	8	3	1
11	Great Britain	1,12	**136**	61	14	12	10	15	4	5	12	3
12	Canada	0.99	**120**	38	8	13	10	17	9	13	8	4
13	Australia	0.89	**108**	18	5	8	12	4	4	21	21	15
14	Czech Republic	0.61	**74**	40	3	7	8	4	1	4	2	5
15	Malaysia	0,54	**65**	17	8	9	3	11	5	7	3	2
16	Ukraine	0,47	**57**	21	1	12	7	3	3	1	7	2
17	Kazakhstan	0,47	**57**	16	3	4	11	5	1	5	9	3
18	Turkey	0.45	**55**	18	4	3	4	8	5	4	6	3
19	China /Taiwan/	0,45	**54**	33	1	3	6	7	2		1	1
20	France	0,45	**54**	14	2	12	4	9	3	4	4	2
21	Netherlands	0.44	**53**	14	3	2	6	7	6	4	6	5
22	Switzerland	0,41	**50**	25	2	3	4	3	3	1	4	5
23	Italy	0,40	**48**	15	3	2	4	13	3	4	4	
24	Pakistan	0,63	**31**	31	1	2	4	4		2		
25	India	0,26	**31**	5	1	5	11	4	1	3	1	
26	Poland	0,24	**29**	16	1	2	2	1	2	1	3	1
27	New Zealand	0.24	**29**	11	1	3	2	3	1	1	4	3
28	Luxemburg	0,20	**24**	2		1		2	1	5	8	5
29	Hungary	0,20	**24**	7	1	5	3		3	4		1
30	Bulgaria	0,17	**21**	12		2	2	1		1	2	1
31	Austria	0,15	**18**	7	1	2	2	6				
32	DRPK	0,14	**17**	9	1	2	1			1	2	1
33	Belgium	0,13	**16**	7		4	2	1		1		1
34	Israel	0,12	**15**	7	1	3	2	2				
35	Bermuda	0,11	**13**	8		3	2					
36	Syria	0,10	**12**	10				2				
37	Uzbekistan	0,10	**12**		1			1	2	6	2	
38	The Bahamas	0,09	**11**	8		2				1		
39	Antigua & Barbuda	0,09	**11**	11								
40	Spain	0,10	**11**	6		1					2	3
41	Cyprus	0,08	**8**				5	3	1		1	
42	Belarus	0,07	**8**	2				1		3	1	1
43	Kyrgyzstan	0,07	**7**	4					1	1	1	1
44	Bangladesh	0.06	**7**				1		1	1	2	2
45	Iran	0,06	**7**		2					3	1	1
46	Sweden	0,06	**7**	2	1		1	2		1		
47	Cayman Islands	0,06	**7**	2		3		1	1			
48	Slovakia	0,06	**6**	3		2	2					
49	Siyal Islands	0.05	**6**				1	2			1	2
50	Barbados	0.05	**6**	2	1						1	2
51	Lebanon	0,05	**5**	3		1					1	1
52	Thailand	0,04	**5**	2					1	1	1	
53	Panama	0,04	**5**	3					1		1	

№	Country	%	Total	1990-2004	2005	2006	2007	2008	2009	2010	2011	2012.06.30
54	Norway	0,04	**4**	2	1	1	1					
55	Estonia	0.03	**4**	1		1						2
56	Arab United Emirates	0.03	**4**									2
57	Anguilla	0.03	**4**							2	2	
58	Ireland	0.03	**4**				1			1	2	
60	Gibraltar	0,03	**4**	1	2					1		
61	Yugoslavia	0,03	**4**	4								
62	Saudi Arabia	0,03	**3**	4								
63	Saint Kits and Nevis	0.02	**3**	1						1		1
64	Denmark	0.02	**3**		1					1		1
65	Mauritius	0.02	**3**		1						2	
66	Azerbaijan	0.02	**3**				1			1	1	
67	Indonesia	0.02	**3**	1					1		1	
68	Belize	0,02	**3**		2					1		
69	Mauritania	0,02	**3**					3				
70	Moldavia	0,02	**3**	2			1					
71	Jordan	0,02	**2**	3								
72	South Africa	0,02	**2**								2	
73	Philippines	0,02	**2**				1				1	
74	Isle of Man	0,02	**2**							2		
75	Iraq	0,02	**2**	1						1		
76	Georgia	0,02	**2**		1				1			
77	Qatar	0,02	**2**					1	1			
78	Sri Lanka	0,02	**2**					2				
79	Armenia	0,02	**2**		1			1				
80	Tajikistan	0,02	**2**	1		1						
81	Ethiopia	0,02	**2**	1		1						
82	China /Macao/	0,02	**2**	2								
83	Samoa	0.01	**1**									1
84	Egypt	0.01	**1**									1
85	British Guernsey Island	0.01	**1**								1	
86	Kuwait	0.01	**1**								1	
87	Turkmenistan	0,02	**2**							1		1
88	Romania	0,01	**1**							1		
89	Nepal	0,01	**1**						1			
90	Argentina	0,01	**1**						1			
91	Finland	0,01	**1**					1				
92	Morocco	0,01	**1**					1				
93	Marshall Islands	0,01	**1**			1						
94	Myanmar	0,01	**1**		1							
95	Turks and Caicos Islands	0,01	**1**		1							
96	Cambodia	0,01	**1**		1							
97	Honduras	0,01	**1**									
98	Portugal	0,01	**1**	1								
99	Lichtenstein	0,01	**1**	1								
100	Croatia	0,01	**1**	1								
101	Greece	0,01	**1**	1								
102	Serbia Montenegro	0,01	**1**	1								
103	Cameroon	0,01	**1**	1	1							
104	Latvia	0,01	**1**	1								
105	Dominion of Melchizedek	0,01	**1**	1								
106	Nigeria	0,01	**1**	1								
107	Malta	0.00	**0**	-								
108	British Indian Ocean territory	0,00	**0**	-								
109	Slovenia	0.00	**0**	-								
110	Minor Outlying Islands	0,00	**0**	-								

№	Country	%	Total	1990-2004	2005	2006	2007	2008	2009	2010	2011	2012.06.30
111	Saint Helena	0,00	**0**	-								
112	US Virgin Islands	0,00	**0**	-								
TOTAL		**100**	**12,118**	3,691	971	1,505	1,609	1,551	613	769	933	476

Source: FIRRD